

**H.R. 69, “ILLEGAL, UNREPORTED,
AND UNREGULATED FISHING EN-
FORCEMENT ACT OF 2013”;
H.R. 2646, “REFI PACIFIC ACT”;
AND H.R.____, “PIRATE FISHING
ELIMINATION ACT”**

LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES, WILDLIFE,
OCEANS AND INSULAR AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

Thursday, April 3, 2014

Serial No. 113–66

Printed for the use of the Committee on Natural Resources



Available via the World Wide Web: <http://www.fdsys.gov>

or

Committee address: <http://naturalresources.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

87–535 PDF

WASHINGTON : 2015

For sale by the Superintendent of Documents, U.S. Government Printing Office
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LEGISLATIVE HEARING ON: H.R. 69, TO STRENGTHEN ENFORCEMENT MECHANISMS TO STOP ILLEGAL, UNREPORTED, AND UNREGULATED FISHING, TO AMEND THE TUNA CONVENTIONS ACT OF 1950 TO IMPLEMENT THE ANTIGUA CONVENTION, AND FOR OTHER PURPOSES, "ILLEGAL, UNREPORTED, AND UNREGULATED FISHING ENFORCEMENT ACT OF 2013"; H.R. 2646, TO DIRECT THE SECRETARY OF COMMERCE TO ISSUE A FISHING CAPACITY REDUCTION LOAN TO REFINANCE THE EXISTING LOAN FUNDING THE PACIFIC COAST GROUND FISH FISHING CAPACITY REDUCTION PROGRAM, "REFI PACIFIC ACT"; AND H.R. ___, TO PREVENT, DETER, AND ELIMINATE ILLEGAL, UNREPORTED, AND UNREGULATED FISHING THROUGH PORT STATE MEASURES, "PIRATE FISHING ELIMINATION ACT"

**Thursday, April 3, 2014
House of Representatives
Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs
Committee on Natural Resources
Washington, DC**

The subcommittee met, pursuant to notice, at 2:00 p.m., in room 1324, Longworth House Office Building, Hon. John Fleming, [Chairman of the Subcommittee] presiding.

Present: Representatives Fleming, Southerland, Sablan, Garcia, and DeFazio (ex officio).

Also Present: Representatives Herrera Beutler, Huffman and Hanabusa.

Dr. FLEMING. The subcommittee will come to order.

The Chairman notes the presence of a quorum.

Before I begin my statement, I ask unanimous consent that the Ranking Member of the Full Committee and ex officio member of the subcommittee, Mr. DeFazio, be allowed to make an opening statement, and that Mr. Huffman and Ms. Herrera Beutler be allowed to participate in the hearing and make an opening statement as well.

However, they have not arrived. So unless there is some objection, we will allow them to provide an opening statement at such time as they arrive.

And without objection, so ordered.

STATEMENT OF THE HON. JOHN FLEMING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Dr. FLEMING. Today the subcommittee will hear testimony on three pieces of legislation, H.R. 69, the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2013; H.R. 2646, the Revitalizing the Economy of Fisheries in the Pacific Act; and a discussion draft of a bill to implement the agreement on the port State measures to prevent, deter, and eliminate illegal, unreported and

unregulated fishing, which is tentatively titled the "Pirate Fishing Elimination Act."

Two of these bills deal with the issue of illegal fishing and how the United States can take action to eliminate the United States as a destination for illegally caught fish. These bills would implement measures supporting international efforts to stop not only the illegal fishing activities, but also eliminate the markets for these illegally caught fish.

It is clear that illegal fishing is a worldwide problem. It is also clear that the United States needs to do its part to stop this activity. While I am not aware that there is a significant problem with foreign vessels poaching fish in the U.S. fisheries, I am aware that illegal fishing in high sea fisheries that U.S. fishermen participate in will affect the market price for U.S. fishermen that they can get for their fish.

I am also aware that the illegal fishing on stocks in other countries can affect U.S. fisheries. As an example, I understand the illegal fishing of Russian crab has affected the U.S. market for crab and has reduced the price U.S. fishermen have been able to get for the sustainably managed U.S. crab.

While I support U.S. efforts to stop illegal fishing, as we strive for compliance with international fishing rules, we need to make sure we are not putting an onerous burden on U.S. fishermen, processors and importers.

In addition, we should take a careful look at the laws that are already on the books and determine where additional tools are necessary rather than enacting new laws that may overlap or conflict with existing authorities.

I am also interested in hearing more about what species of fish are most likely to be harvested by IUU vessels and what nations appear to be the worst actors. Focusing on the worst nations and on the fisheries which are most likely to be affected by IUU fishing would seem to be an effective start to addressing this problem.

Finally, the subcommittee has already held a number of hearings on the requirements of the Lacey Act that require U.S. citizens to know and understand foreign laws and regulations when buying or transporting fish, wildlife and wood products. I am concerned the legislation before us would magnify that unreasonable burden.

The third bill, H.R. 2646, introduced by our colleague from Washington State, Ms. Herrera Beutler, would allow the West Coast groundfish fishery to refinance a loan which was taken out to reduce the capacity of the fleet in that fishery.

At the time of the loan the repayment terms were thought to be reasonable, and the fleet willingly took on the responsibility. However, the costs of managing the fishery have changed and so have the prevailing interest rates. As I understand it, after the loan was taken out, changes in the management system for that fishery have imposed new costs on the fishermen, including a management fee of 3 percent on the value of all landings and a requirement that 100 percent of the vessels in the fishery carry at-sea observers at a cost of approximately \$450 a day.

These new fees were imposed in addition to the 5 percent fee on the value of all landings from the fishery to repay the loan. These

new fees in addition to the burden of the loan repayment are threatening the economic viability of some vessels in the fleet.

This legislation will allow the loan to be repaid over a longer time period and would reduce the interest rate to one more in line with today's interest rates. It would not negate the requirement that fishermen repay the loan or reduce the overall loan, but would allow the affected fishermen to afford the increased management costs and repay the loan in a timely manner.

I look forward to hearing from today's witnesses on all three of these bills.

[The prepared statement of Dr. Fleming follows:]

PREPARED STATEMENT OF THE HON. JOHN FLEMING, CHAIRMAN, SUBCOMMITTEE ON FISHERIES, WILDLIFE, OCEANS AND INSULAR AFFAIRS

Good afternoon. Today, the subcommittee will hear testimony on three pieces of legislation—H.R. 69, the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2013, H.R. 2646, the Revitalizing the Economy of Fisheries in the Pacific Act, and a discussion draft of a bill to implement the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing—which is tentatively titled the Pirate Fishing Elimination Act.

Two of these bills deal with the issue of illegal fishing and how the United States can take action to eliminate the United States as a destination for illegally caught fish.

These bills would implement measures supporting international efforts to stop not only the illegal fishing activities, but also eliminate the markets for these illegally caught fish.

It is clear that illegal fishing is a worldwide problem. It is also clear that the United States needs to do its part to stop this activity. While I am not aware that there is a significant problem with foreign vessels "poaching" fish in U.S. fisheries, I am aware that illegal fishing in high seas fisheries that U.S. fishermen participate in will affect the market price U.S. fishermen can get for their fish. I am also aware that illegal fishing on stocks in other countries can affect U.S. fisheries. As an example, I understand the illegal fishing of Russian crab has affected the U.S. market for crab and has reduced the price U.S. fishermen have been able to get for the sustainably managed U.S. crab.

While I support U.S. efforts to stop illegal fishing, as we strive for compliance with international fishing rules, we need to make sure we are not putting an onerous burden on U.S. fishermen, processors, and importers.

In addition, we should take a careful look at laws that are already on the books and determine where additional tools are necessary rather than enacting new laws that may overlap or conflict with existing authorities. I am also interested in hearing more about what species of fish are most likely to be harvested by IUU vessels and what nations appear to be the worst actors. Focusing on the worst nations and on the fisheries which are most likely to be affected by IUU fishing would seem to be an effective start to addressing this problem.

Finally, this subcommittee has already held a number of hearings on the requirements of the Lacey Act that require U.S. citizens to know and understand foreign laws and regulations when buying or transporting fish, wildlife, and wood products. I am concerned that legislation before us would magnify that unreasonable burden.

The third bill, H.R. 2646, introduced by our Colleague from Washington State, Mrs. Herrera Beutler, would allow the West Coast groundfish fishery to refinance a loan which was taken out to reduce the capacity of the fleet in that fishery. At the time of the loan, the repayment terms were thought to be reasonable and the fleet willingly took on the responsibility; however, the costs of managing the fishery have changed and so have the prevailing interest rates.

As I understand it, after the loan was taken out, changes in the management system for that fishery have imposed new costs on the fishermen including a management fee of 3 percent on the value of all landings and a requirement that 100 percent of the vessels in the fishery carry at-sea observers—at a cost of approximately \$450/day. These new fees were imposed in addition to the 5 percent fee on the value of all landings from the fishery to repay the loan. These new fees in addition to the burden of the loan repayment are threatening the economic viability of some vessels in the fleet.

This legislation would allow the loan to be repaid over a longer time period and would reduce the interest rate to one more in line with today's interest rates. It would not negate the requirement that fishermen repay the loan or reduce the overall loan, but would allow the affected fishermen to afford the increased management costs and repay the loan in a timely manner.

I look forward to hearing from today's witnesses on all three of these bills.

Dr. FLEMING. At this time I would like to recognize the distinguished Ranking Member, Congressman Sablan, for any statement he would like to make.

**STATEMENT OF THE HON. GREGORIO KILILI CAMACHO
SABLAN, A REPRESENTATIVE IN CONGRESS FROM THE COM-
MONWEALTH OF THE NORTHERN MARIANA ISLANDS**

Mr. SABLAN. Thank you. Thank you very much, Mr. Chairman, and welcome to all of our guests this morning.

Mr. Chairman, at the onset I would like to thank Ms. Bordallo, my distinguished colleague from Guam, for introducing one of the bills before us for which I am an original co-sponsor, the "Illegal, Unreported, and Unregulated (the IUU) Fishing Enforcement Act of 2013."

While Ms. Bordallo has to necessarily be on Guam and could not be with us today, I ask unanimous consent to enter for the record her statements on the bill.

Dr. FLEMING. Without objection, so ordered.

[The prepared statement on H.R. 69 of Ms. Bordallo follows:]

**PREPARED STATEMENT OF MADELEINE Z. BORDALLO, A REPRESENTATIVE IN
CONGRESS FROM GUAM**

I thank Chairman John Fleming and Ranking Member Kili Sablan for calling this important legislative hearing to order. I appreciate that the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs meets this afternoon to hear testimony regarding H.R. 69, the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2013, a bill I introduced on the first legislative day of the 2nd session of the 113th Congress.

The United States demonstrates strong leadership in fisheries management both nationally and internationally. However, despite these efforts, over 70 percent of major global marine fish stocks are exploited or depleted, which is driven, in part, by the persistence of illegal, unreported, and unregulated (IUU) fishing. Illegal fishing threatens the economic and social infrastructure of fishing communities, and threatens the security of the United States and our allies around the world, by decreasing opportunities for legitimate and conscientious fishermen. Additional action is needed from Congress if we are to be successful in combating IUU fishing and the depletion of fish stocks worldwide.

IUU fishing is estimated to have an annual global value of over \$10 billion, or between 10 percent and 22 percent of the annual reported global fish catch, severely undermining the U.S. fishing industry and fisheries management efforts in the United States and in other countries, according to studies by experts like Dr. David Agnew of Imperial College London. Unsustainable fishing practices by foreign fishing fleets adversely affect stocks that migrate between the U.S. Exclusive Economic Zone (the EEZ) and the high seas. This problem can be particularly acute in places like Guam and the Gulf Coast where the EEZ is vast and borders other EEZs.

The loss of economic opportunity weakens our allies in the Pacific and exacerbates resource conflicts in the region. The Coast Guard estimates that over \$1.7 billion is lost annually to IUU fishing in the Pacific Islands. In the Gulf Coast, illegal fishing of sharks, spurred by a demand from abroad, may account for more than half of U.S. commercial shark quotas.

The United States' Pacific represents 43 percent of the entire United States EEZ. In particular, Guam, the Northern Marianas, Hawaii, and the other Pacific islands, host rich fisheries resources, including pristine reefs, diverse communities of reef fish, and large populations of sharks and valuable tuna; important economic and

cultural assets for the islands and the United States. IUU fishing threatens these resources. There have been several incidents of foreign fishing vessels operating within the United States' EEZ with impunity—a significant national security and economic risk to our country. The Navy and Coast Guard have recognized the economic and security threats posed by illegal fishing in Oceania, and it is incumbent on the Administration and Congress to strengthen enforcement measures against IUU fishing.

Increased enforcement increases stability among our allies in the Western Pacific and up and down our coasts. Many nations depend upon fishing as a vital component of their national economy. Protecting our fishermen from illegal fishing enhances economic opportunities and protects cultural and natural resources upon which our communities rely. IUU fishermen are “free riders” who benefit unfairly from the sacrifices made by U.S. fishermen and others for the sake of proper fisheries conservation and management. IUU fishing when it depletes the resources of small communities has the ability to create social instability, which causes further security problems in the region. We must do all that we can to help our allies avoid that from happening.

On March 5, 2013, Admiral Sam Locklear, Commander of U.S. Pacific Command, testified before the House Armed Services Committee at an annual posture hearing. In response to a question about IUU fishing, he stated, “Most of the nations, or most of the folks in Oceania— island nations do not have the capability to properly—to adequately monitor and understand what's happening in their economic zones. So the ability for them to be taken advantage of to their economic detriment is growing. The Coast Guard in the Pacific and the U.S. Navy in the Pacific work closely together to support, where we can, programs that allow us to help the nations monitor their economic zones for illegal fishing. It's not comprehensive.” We must support our allies, but more can be done to enhance our ability to thwart IUU fishing.

The *Illegal, Unreported, Unregulated Fishing Enforcement Enhancement Act of 2013* further enhances the enforcement authority of NOAA and the U.S. Coast Guard to regulate IUU fishing. This bill would amend international and regional fishery management organization (RFMO) agreements to incorporate the civil penalties, permit sanctions, criminal offenses, civil forfeitures, and enforcement sections of the Magnuson-Stevens Fishery Conservation and Management Act. It would strengthen enforcement authority of NOAA and the U.S. Coast Guard to inspect conveyances, facilities, and records involving the storage, processing, transport and trade of fish and fish products, and to detain fish and fish products for up to 5 days while an investigation is ongoing.

This bill will also implement the Antigua Convention, an important international agreement that provides critical updates to the principles, functions, and processes of the Inter-American Tropical Tuna Commission (IATTC) to manage fisheries in the eastern Pacific Ocean. The Antigua Convention modernizes the IATTC and increases its capacity to combat IUU fishing and illegal imports of tuna product. Without implementing legislation, the United States does not have the authorities necessary to satisfy its commitments under the Antigua Convention, including addressing IUU in the eastern Pacific Ocean.

In addition, this bill makes technical adjustments allowing NOAA to more effectively carry out current IUU identification mandates, including extending the duration of time for identification of violators from the preceding 2 years to the preceding 3 years. This bill broadens data sharing authority to enable NOAA to share information with foreign governments and clarifies that all information collected may be shared with international organizations and foreign governments for the purpose of conducting enforcement. This bill would also establish an international cooperation and assistance program to provide technical expertise to other nations to help them address IUU fishing. This bill focuses on enhancing enforcement authority and does not authorize new funding or appropriations.

I would like to thank my fellow subcommittee members, Mr. Sablan, Mr. Pierluisi, Mr. Faleomavaega, Ms. Hanabusa, and Mr. Lowenthal, for their co-sponsorship of H.R. 69. I also note that this bill has bipartisan support; Mr. Grimm has joined as a cosponsor, and just last month, I co-sponsored a briefing with Mr. Michael McCaul, Chair of the Committee on Homeland Security, where IUU experts outlined the realities and costs of IUU fishing. I look forward to continuing to work with my colleagues on both sides of the aisle to advance this important bill that will combat IUU fishing.

Mr. SABLÁN. Thank you.

The United States demonstrates strong leadership in fisheries management both nationally and internationally. Scientifically supported management standards are critical to the sustainability of our fisheries and, therefore, to the livelihoods of our fishermen.

The U.S. fishermen have worked hard to meet the standards set forth in the Magnuson-Stevens Act, and their efforts are paying off as we are seeing critical stocks rebuilt around the country.

But despite these efforts, nearly 90 percent of global marine fish stocks are fully exploited or depleted largely because of persistent IUU fishing. With an annual global value of as much as \$23.5 billion, IUU fishing undermines the U.S. fisheries management efforts and its fishermen who are forced to compete for the same fish with people who do not play by the same rules.

Unsustainable fishing practices by foreign fishing fleets adversely affect stocks that migrate between the U.S. exclusive economic zone and the high seas, and we will hear from our witnesses today. IUU fishing has been linked to human trafficking and drug running, making it a threat not just to our economies but to our security as well.

The National Oceanic and Atmospheric Administration, NOAA, and the U.S. Coast Guard are doing their best to stop this illegal activity, but they can do better with our help. H.R. 69 would provide the additional tools critically needed to help NOAA and the Coast Guard more effectively fight against IUU fishing.

This bill would strengthen and improve enforcement authorities and align them under the MSA with more stringent penalties. It would also provide additional authority for the United States to identify and penalize nations that do not comply with the regional fisheries management organizations' recommendations that U.S. fishermen follow.

These are just a few of the benefits prescribed in this important legislation we will discuss today.

But trying to catch criminals in the act of illegal fishing on the vast ocean is extremely difficult, especially in an area like the Pacific Islands region which has an EEZ larger than the continent of the United States and Alaska combined.

Resource limitations create another obstacle. U.S. underwater fisheries enforcement capacity for Guam and the Northern Mariana currently consists of a single small boat. For those reasons, the unnumbered discussion draft we will take up today that would implement the agreement on port State measures to prevent, deter and eliminate illegal, unreported, and unregulated fishing, or PSMA, is an important and necessary complement to H.R. 69.

Parties to PSMA are bound to refuse port entry or services, including landing and transshipment of fish, to foreign flag vessels known to have engaged in IUU fishing. If these vessels have nowhere to land their catch, then the catch is worthless and there will be no incentive to continue fishing.

While the United States already follows many of these procedures outlined in the PSMA, the U.S. ratification of the agreement will send a strong message to other fishing nations that we are serious about leading the way toward sustainable fisheries management.

Finally, I would also like to voice my support for H.R. 2646, a bill that I know is important to our committee's Ranking Member, Mr. DeFazio, as well as to my friend, Mr. Huffman. We will hear more about this legislation from the both of them.

And I thank each of the witnesses for joining us today, and look forward to hearing from you.

Thank you, Ambassador and Mr. Sullivan's stand-in, Mr. Smith.

Dr. FLEMING. I thank the gentleman, and perhaps we should adopt a rule today to just say "NOAA" and not try to—

Mr. SABLAN. Yes.

Dr. FLEMING. That is a very long word and it is hard for all of us to get it out in a complete sentence.

At any rate, I thank the gentleman, the Ranking Member.

At this time I would like to recognize the distinguished Ranking Member of the Full Committee, Mr. DeFazio for a statement he would like to make.

STATEMENT OF THE HON. PETER DEFAZIO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. DEFAZIO. Thank you, Mr. Chairman.

Mr. Chairman, I very much appreciate your holding a hearing today on these three measures. We actually have before us in a bill that was introduced by our colleague, who is sitting on the dais, something that is probably the rarest of things and endangered in Washington, DC, which is a bicameral, my gosh, bipartisan bill that solves a very real problem. I congratulate the gentlelady for her introduction, and I am pleased to be a sponsor of the legislation.

You already mentioned briefly so I will not be repetitive. The bottom line is the buyout on the West Coast, it kind of made me look at national marine fisheries in a little different way. I am starting to look at them like a payday lender. You know, first they charged an extortionate interest rate, which was two points above prime, despite the government's borrowing costs being much less.

And, second, they did not establish a repayment mechanism for 18 months and kept running up the tab. I mean, the fishermen were supposed to pay a share of their landing costs to defray the loan, but this is like one of those catchy mortgage loans that put a lot of people underwater back in 2008. And this is quite egregious. It is jeopardizing the livelihoods of many fishermen and women on the West Coast.

And the other thing that is odd about it is in other cases, for instance, New England, they got a \$35 million buyout for zero cost and no interest. But somehow we are being pegged at a usurious rate and were running up a bill on interest because we were not allowed to repay.

The bill would rectify this, refinance the loan, extend the repayment period. The government would in the end come out whole, and in fact, I think would come out ahead because these people would continue to be able to work and pay taxes, and if we do not do this, many may well have to give up fishing.

Then we also have, and already the gentleman, Mr. Sablan, mentioned it at some length, Congresswoman Bordallo's bill, and again, I will not be repetitive, but it would help us to deal with pirate

fishing or IUU fishing, you know, illegal, unreported, and unregulated fishing if you want to be exact.

And then the second bill, which is a bill in discussion draft form, and I would be happy to hear comments on it today for potential changes before we formally introduce, which Congresswoman Hanabusa and I drafted, which would use port State measures to prevent, deter, again, pirate fishing. And in a very, very effective way by denying people access to markets and doing it in a regular and predictable way to get at those who abuse the system.

With that, Mr. Chairman, I would also thank—I am going too quickly here—the Congressman from California, Mr. Huffman, for his sponsorship on the bipartisan, bicameral REFI bill.

Thank you, Mr. Chairman.

Dr. FLEMING. I thank the gentleman.

Next the Chair recognizes Mr. Huffman for any statement he would like to make.

STATEMENT OF THE HON. JARED HUFFMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HUFFMAN. Thank you very much, Mr. Chair, and I want to thank the Ranking Member as well for scheduling time in this hearing for this important bipartisan, bicameral bill and a sincere thanks to Representative Herrera Beutler for her leadership and for working with me and my staff on this. Thanks to my colleague, Peter DeFazio, as well.

The health of the coastal economy in my district and many others represented on this committee is dependent, of course, on the success of our local fishermen and the jobs that they create. In my district, the groundfish fleet is a very important player in the local economy, especially around our small ports.

Groundfish fishermen buy fuel. They buy gear, and the fish that they land support jobs at processing plants. In my district alone on any given year there are more than a dozen trawlers that contribute to over 100,000 metric tons of fish that are caught along the West Coast, and the value of that catch exceeds \$80 million.

Beyond the economic contribution provided by our groundfish fishermen, many are also playing a stewardship role on the health of our fisheries. The industry supported Catch Share Program that got started in 2011 has been very successful. It has substantially reduced the bycatch of non-target species.

However, the viability of this industry, particularly for small boat fleets, is at risk. As of February 14 of this year, the West Coast ground fishery had paid over \$20 million of the interest on that original Federal loan, but they had made very little progress on the principal balance.

Presently, over \$27 million is still owed of that original \$35 million loan. Fishermen continue to diligently work to pay this loan back, but they, as the Chair noted, are facing new fees, and of course, they have rising fuel costs and other pressures.

And that is why we have introduced this bipartisan REFI legislation. It makes perfect sense to refinance this decades old loan at today's low interest rates to help keep our fishermen in business. If they go under, it is important to note there will be nobody to pay back this loan because the loan payments are based upon their

landings. If there are no landings and no money from those catches, this loan goes unpaid and everybody loses.

Getting this commercial fishery back on its feet is just as important as the progress we have made to get it on more stable ecological and operational footing. So, Mr. Chair, this is a simple refinancing bill.

Just as any other small business or homeowner would refinance in this current low interest climate, we need to provide that opportunity for this fishing fleet. It is a smart bill. It is going to keep these folks fishing so that they can create the jobs and provide the revenues that will help repay this loan to the Federal Government.

And I want to thank again the committee for including this bill in the hearing and yield back the remainder of my time.

Dr. FLEMING. The gentleman yields his time, and the Chair now recognizes Ms. Herrera Beutler for any statement she would like to make.

STATEMENT OF THE HON. JAIME HERRERA BEUTLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Ms. HERRERA BEUTLER. Thank you, Chairman Fleming and Ranking Member Sablan and Ranking Member of the Full Committee, Mr. DeFazio.

I appreciate the opportunity to advocate on behalf of revitalizing the economy of fisheries in the Pacific or the REFI Act. I would like to thank Congressman Huffman for playing a critical role in the introduction of this legislation and several members here today, Ranking Member DeFazio and Congressman Young for their co-sponsorship, and it is not every day that you get both Mr. DeFazio and Mr. Young on the same piece of legislation, I would like to add.

I am very pleased that Jim Neva was willing to make the trip across the country to testify. Jim has 20 years of experience managing fishing ports on the Washington coast, and most recently Jim managed the Port of Ilwaco, which serves as a lifeline to businesses and coastal communities in southwest Washington. So I am honored to have him here today.

Mr. Chairman, the fishermen off the West Coast of Oregon, Washington, and California are struggling to sustain their businesses, as we have heard. Coastal communities in my district have not been immune to the economic downturn of the last half decade, and in fact, many of those who have endured some of the highest unemployment in the Nation deserve some relief, and H.R. 2646, the REFI Act will provide that relief.

The West Coast groundfish fishery was declared an economic disaster in 2000 because of the overcapitalization and overfishing. In 2003, Congress authorized the buyback loans for the fishery to decrease the fishing pressure and support a Catch Share Program for the fishery.

These loans helped eliminate overfishing by buying out the permits of fishermen who are willing to leave the fleet, and Congress was responding to a very real need. But since, we have learned that this program was set up in an unsustainable manner as Mr. DeFazio so aptly described it.

Fishermen in the region have been diligently paying back their loans. That is a key point, plus interest, but at its current rate, it just unaffordable. So rather than watch these small businesses go out and default, we want them to pay it back. It is time to update the terms so the industry can continue to do what they do best.

There are three aspects to this bill. It is going to decrease the ex-vessel rate, which is the minimum payment on each landing. It will allow a loan to be financed at current interest rates, and it extends the term for another 10 years.

Mr. Chairman, this bill enjoys broad bipartisan support. The Pacific Fishery Management Council, our governing body, has noted that if we do not take action on these loans, economic casualties in the fishery are feared. So this is a tremendous opportunity to take that action, and I really appreciate your willingness to hear the REFI Act and for your support.

With that I yield back.

Dr. FLEMING. The gentlelady yields back, and we thank her for her statement.

We will now hear from our first panel of witnesses, which includes Ambassador David A. Balton, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State; and Mr. Russell Smith, Deputy Assistant Secretary for International Fisheries, National Oceanic and Atmospheric Administration, otherwise known as NOAA, Department of Commerce.

Your written testimony will appear in full in the hearing record. So I ask that you keep your oral statements to 5 minutes as outlined in our invitation letter to you and under Committee Rule 4(a).

Our microphones are not automatic. So be sure and press the button when you get ready to speak, and make sure the tip is close to your mouth.

And also with respect to our lights, you will be under green light for the first 4 minutes, the yellow light for the last minute. When it turns red, we ask that you conclude your statement as quickly as possible so we can get right on to questions.

And also just to note here, we expect votes any time. So when that happens we will adjourn briefly. I do not expect the vote series to be long, and we will be right back and we will finish up.

So with that, Ambassador Balton, you are now recognized for 5 minutes, sir.

STATEMENT OF AMBASSADOR DAVID A. BALTON, DEPUTY ASSISTANT SECRETARY FOR OCEANS AND FISHERIES, BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS, DEPARTMENT OF STATE

Ambassador BALTON. Mr. Chairman, members of the subcommittee, thank you very much for the opportunity to testify.

I will speak about two of the three measures under consideration today, namely, H.R. 69 and the draft bill tentatively titled "The Pirate Fishing Elimination Act."

These bills would, among other things, provide authority to implement two significant international agreements in the field of fisheries. These agreements are the Antigua Convention and the

Port States Measures Agreement. Ratification of these agreements will allow the United States to reinforce its leadership role at the international level with respect to oceans issues in general and marine fisheries in particular.

These agreements have strong support from a broad range of U.S. stakeholders, including representatives of the U.S. fishing industry and the environmental and scientific communities. Many of these representatives participated actively in the negotiations that led to the adoption of these agreements.

I would like to say a few words about each of the agreements and the bills that would implement them. Title 2 of H.R. 69 contains implementing legislation for the Antigua Convention. This treaty supersedes the 1949 treaty that created the Inter-American Tropical Tuna Commission, or IATTC. The United States signed this convention in 2003, and the Senate has already provided advice and consent to its ratification.

The Antigua Convention brings the 1949 IATTC treaty up to date. It takes account of the many changes in international law in the field of fisheries that have occurred since 1949, as well as the changes that have occurred in fisheries management since that time.

The Antigua Convention entered into force in 2010 and now has 21 parties. Although the United States could implement much of the Antigua Convention under existing statutory authority, certain changes in domestic law are needed before the United States can join this convention. H.R. 69 would make these changes.

I will turn now to the Pirate Fishing Elimination Act draft bill, which would implement the Port State Measures Agreement. This treaty agreement is the first binding global instrument specifically designed to combat illegal, unreported, and unregulated, or IUU, fishing.

The United States took a leadership role in the development of this agreement. We were among the first nations to sign the agreement when it was adopted in 2009. The President transmitted it to the Senate for advice and consent in 2011. The Senate Foreign Relations Committee recently held a hearing on this treaty and has already approved it.

IUU fishing, as many have already said today, undermines efforts to conserve and manage shared fish stocks and threatens the sustainability of all fisheries. Estimates of global losses due to IUU fishing ranged from \$10 billion a year to \$23 billion a year.

Moreover, the very vessels and foreign companies involved in illegal fishing activities are often involved in human trafficking, drug trafficking, labor exploitation, and environmental degradation. The U.S. ratification of the Port State Measures Agreement will give us additional tools to address these challenges.

Since IUU fisheries can operate anywhere, detecting activities at sea is difficult and expensive, but all fish caught at sea must ultimately come to port in order to enter the stream of commerce. The Port State Measures Agreement establishes standards and requirements for port States to ensure that IUU caught fish will not be landed, transshipped, packaged or processed in their ports.

Timely ratification would, again, underscore the commitment of the United States to strengthening efforts at the global and national levels to detect, deter, and eliminate IUU fishing.

In closing, I would simply reiterate the importance of these agreements to advancing U.S. economic interests and fisheries management objectives at the international level. We look forward to working with committee staff as the legislation moves forward.

And thank you very much, once again. I am happy to answer any questions that you may have.

[The prepared statement of Ambassador Balton follows:]

PREPARED STATEMENT OF AMBASSADOR DAVID A. BALTON, DEPUTY ASSISTANT
SECRETARY OF STATE FOR OCEANS AND FISHERIES

Mr. Chairman and members of the subcommittee, I am Ambassador David Balton, Deputy Assistant Secretary of State for Oceans and Fisheries. I am pleased to testify before you today on H.R. 69 and the draft bill titled the "Pirate Fishing Elimination Act."

The agreements that would be implemented by these bills are the Antigua Convention and the Port States Measures Agreement. These international agreements advance our international goals and objectives, including broad foreign policy objectives, and promote responsible and sustainable use of our oceans resources. The agreements represent significant progress in protecting U.S. interests, advancing our international policies and priorities to conserve and manage shared living marine resources, to protect the broader marine environment from the effects of destructive fishing practices, and to prevent illegal fishing activities from undermining our global and regional efforts toward these ends. Both of these agreements have strong support from a broad range of stakeholders, including representatives of the U.S. fishing industry and the environmental and scientific communities, many of whom participated actively in the negotiations.

H.R. 69 and the Antigua Convention

H.R. 69 contains implementing legislation for an agreement called the Antigua Convention, which updates and is to supersede the 1949 Convention establishing the Inter-American Tropical Tuna Commission (IATTC). In 2003, with invaluable assistance from the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, the Department of State led the negotiation of the Antigua Convention and strongly supports the result of those negotiations. The United States signed the Convention on November 14, 2003, and the Senate provided advice and consent to ratification on November 17, 2005.

The negotiation and adoption of the Antigua Convention allowed the United States and the other participating countries to modernize the original Convention that established the IATTC in 1949 to reflect the evolution of the practices of the IATTC and the international community in managing highly migratory fish stocks, including moving from managing just target species to incorporating some of the broader effects of fishing on the marine ecosystem in management decisions.

The Antigua Convention also incorporates important changes in international law governing the conservation and management of living marine resources that have taken place since 1949, and provides for membership in the IATTC of both the European Union and Taiwan. In particular, the Antigua Convention incorporates many of the elements of the 1995 United Nations Fish Stocks Agreement, including: coverage of virtually all highly migratory fish species in the Convention Area, a precautionary approach to conservation and management of the species covered, provisions for conservation measures for non-fish species affected by fishing operations for tunas, enhanced provisions for monitoring, surveillance and enforcement, and other measures. The United States is a party to the United Nations Fish Stocks Agreement—we were the third country to ratify that Agreement, which now has 81 parties.

The Antigua Convention entered into force in 2010 and now has 21 parties. The United States remains a Member of the IATTC by virtue of our being party to the 1949 Convention. Although the United States could implement much of the Antigua Convention under existing statutory authority, it is envisaged that certain changes in domestic law are needed before the United States can deposit its instrument of ratification. We look forward to working with committee staff on this issue.

“Pirate Fishing Elimination Act” Draft Bill and the Port State Measures Agreement

The Pirate Fishing Elimination Act draft bill contains implementing legislation for the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the Port State Measures Agreement). This is a global agreement, and is in fact the first binding global agreement specifically intended to combat illegal, unreported, and unregulated—or IUU—fishing. The United States signed the Port State Measures Agreement on November 22, 2009. The President transmitted the Agreement to the Senate for advice and consent November 14, 2011.

IUU fishing undermines efforts to conserve and manage shared fish stocks and threatens the sustainability of all fisheries as well as other living marine resources taken as bycatch. Estimates of global losses due to IUU fishing range from \$10 to \$23 billion each year.¹ The large number of developing States that depend on fisheries for food security and export income are particularly vulnerable. A secondary benefit to ratification of the Port State Measures Agreement and the other treaties under consideration is that it will give the United States additional tools to address illegal activities that are often intertwined with IUU fishing, including drug and human trafficking, labor exploitation, environmental degradation, and organized crime.

Since IUU fishers can operate anywhere, detecting activities at sea is difficult and expensive. But, in order to sell or trade their illegal catch, they ultimately need to bring the fish to a port for landing or transshipment. The Port State Measures Agreement establishes standards and requirements for port States to ensure IUU-caught fish will not be landed, transshipped, packaged, or processed in their ports.

Here again, the Department of State and NMFS took a leadership role in the development of this Agreement, hosting and chairing the initial informal meetings that led to the Agreement to engage in formal negotiations toward a legally binding instrument. Timely ratification would again underscore the commitment of the United States to strengthening efforts at the global and national levels to detect, deter and eliminate IUU fishing. We look forward to working with committee staff.

Conclusion

In closing, I would simply reiterate the importance of these agreements to advancing U.S. economic interests and fisheries management objectives at the international level.

Thank you very much. I am happy to answer any questions you may have.

QUESTIONS SUBMITTED FOR THE RECORD BY CHAIRMAN JOHN FLEMING TO
AMBASSADOR DAVID A. BALTON

Question. Mr. Kraft notes in his testimony that fishing vessels flagged in Korea, Taiwan, China, and Belize are the biggest culprits. If we already know this, what is being done to get these countries to address the problems that are apparently a problem within those countries?

Answer. In addition to the certification process under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) that is managed by the Department of Commerce’s National Oceanic and Atmospheric Administration (NOAA), the Department of State (State), in coordination with NOAA, conducts consultations with foreign affairs and fisheries representatives from countries and entities who are suspected of illegal, unreported, and unregulated (IUU) fishing. We do this primarily through fora such as Regional Fisheries Management Organizations (RFMOs) in which we participate, which have procedures for monitoring compliance and addressing issues as they are identified. That process can also include bilateral consultations with a specific member of the organization in question. For example, if we were concerned about a fellow member of the Western and Central Pacific Fisheries Commission (WCPFC), we would conduct bilateral consultations on the margins of WCPFC meetings to discuss how they can work to better comply with various WCPFC conservation and management measures, which are legally binding commitments and have been implemented with the intent of preventing and deterring IUU fishing. The United States also works within the various RFMOs to take action against both members and non-members whose vessels undermine these binding rules. Through U.S. leadership, RFMOs are working to put in place schemes

¹ Review of Impacts of Illegal, Unreported and Unregulated Fishing on Developing Countries (Marine Resources Assessment Group Ltd, London, United Kingdom, June 2005; <http://transparentsea.co/images/5/58/Illegal-fishing-mrag-report.pdf>).

that impose a range of multilateral actions against flag States that break the rules—including loss of fishing rights or trade restrictions.

All of the RFMOs maintain lists of specific vessels found to have engaged in IUU fishing, and the United States and other RFMO members apply a range of sanctions against listed vessels, including keeping them from entering ports, accessing port services, or landing any of their catch and prohibiting imports of fish caught by these vessels. The heart of the Port State Measures Agreement is to take these measures and make them universal, so that all port States, not just the members of a particular RFMO, can take action against these IUU vessels.

Question. For years, the committee has heard concern about the IUU harvest of Russian crab. This was a real-world example of the effect of IUU fishing on the United States. Why was Russia not identified as an IUU nation in the latest report to Congress?

Answer. We defer to the Department of Commerce for a response to the question of why Russia is not listed in the most recent report to Congress as they are the agency responsible for preparing that report. We note, however, that we have repeatedly raised the issue of illegal crab harvests with Russia in our bilateral engagements for many years. Within the U.S.-Russia Intergovernmental Consultative Committee (ICC), the bilateral forum for cooperation on fisheries issues, we have been working to develop an agreement with Russia to address this and other issues related to IUU fishing. Efforts to advance and conclude this agreement have recently been complicated by events in Ukraine.

Question. Mr. Kraft's testimony notes that the Port States Measures Agreement is modeled after the U.S. domestic IUU fishing laws. If the Agreement is modeled after existing U.S. law, why is this legislation necessary? What specific provisions of the Agreement are not currently covered by existing law? What specific provisions in the draft legislation would add additional authorities or requirements that are not already in U.S. law?

Answer. We understand that the Department of Commerce has also received these questions. We defer to Commerce for an appropriate response to these questions.

Question. The Nicholson Act allows foreign fishing vessels to land fish in limited ports in the territories. How will the legislation affect fisheries trade at these ports? Is there concern that IUU vessels are using these ports to introduce IUU fish into the U.S. seafood market?

Answer. We understand that the Department of Commerce has also received these questions. We defer to Commerce for an appropriate response to these questions.

Question. Mr. Walsh notes that the Nicholson Act prohibits foreign-flag vessels from landing fish in almost all U.S. ports, but that there is an exemption for fish caught under a treaty which could allow such landings by foreign-flag vessels. Can you tell us how many of these treaties exist and what fisheries and regions these treaties affect? Can you tell us the extent of foreign-flag vessels that these treaties would allow to access U.S. ports? Do these treaties limit the vessels that have access to U.S. ports and do we know exactly which vessels are authorized to access U.S. ports under the treaty?

Answer. The Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges ("Treaty") is the subject of the exemption included in the Nicholson Act for foreign-flagged vessels to land fish in U.S. ports. This treaty relates to the albacore troll fishery off the west coasts of California, Oregon, and Washington in the United States and British Columbia in Canada. Annex B of the Treaty elaborates specific ports in the United States and Canada in which foreign vessels are allowed to land fish taken in the albacore troll fishery. Pursuant to the 2013 fishing regime under the Treaty, no more than 45 Canadian albacore troll vessels were allowed to land fish in the specified ports. The 2014–2016 regime will remain at those levels.

Question. Under the Port States Measures Agreement, is there a dispute mechanism for a country or a vessel to dispute being labeled as an IUU vessel or country? A recent article noted that Korean fishermen were accusing the European Union of using a double standard when identifying vessels and countries on its IUU list. How can this type of dispute be resolved under the Agreement?

Answer. Unlike the High Seas Driftnet Fishing Moratorium Protection Act, neither the Port State Measures Agreement nor Representative DeFazio's draft bill entitled "Pirate Fishing Elimination Act" provide for the identification of a nation as

engaged in IUU fishing. They do call for restrictions, with certain exceptions, on port entry and access to port services for foreign vessels that have engaged in IUU fishing, particularly vessels included on the IUU fishing vessel list of an RFMO. Where the laws of the port State provide for potential recourse to the owner, operator, master, or representative of a vessel that has been the subject of a denial of port entry, denial of use of a port, an inspection, or port State actions following an inspection, and information about such recourse is public and requested in writing to the port State, the Agreement requires the port State to provide such information. In addition, Parties to the Agreement are bound by the rather common dispute settlement provisions in Part 7 of the Agreement. Finally, each of the RFMOs that have established an IUU fishing vessel list has a process to introduce evidence of IUU fishing activity, and for countering that information, before a vessel is placed on an IUU fishing vessel list. Likewise, each of these RFMOs also has a process for removing vessels from the list.

Question. The draft Port States Measures implementing legislation would allow enforcement agents to conduct search and seizures with or without warrants. Why is this necessary?

Answer. We understand that the Department of Commerce has also received this question. We defer to Commerce for an appropriate response to this question.

Question. The bill would also allow the Secretary of Commerce to use personnel from almost any Federal or State agency (as long as there is an agreement in place) to enforce this Act. It also gives these new enforcement officers the ability to conduct search and seizures and enforce any law of the United States. This seems to be a huge expansion of enforcement authorities. Why is this necessary?

Answer. We understand that the Department of Commerce has also received this question. We defer to Commerce for an appropriate response to this question.

Question. Mr. Walsh's testimony raises a concern that under the legislation being considered today, even a minor violation of the Magnuson-Stevens Act could result in that vessel being labeled as an IUU vessel by another country. Is this an accurate reading of the legislation? If so, that may be overly inclusive. What can we do to fix this legislation so that only egregious violations of the Magnuson-Stevens Act are considered to be serious enough for the vessel to be considered an IUU vessel?

Answer. We understand that the Department of Commerce has also received these questions. We defer to Commerce for an appropriate response to this question.

Question. Mr. Walsh also notes in his testimony that foreign countries could use the threat of an IUU label as a means of extracting fines from U.S. vessels. Is there something the vessel owner could do or the U.S. Government could do to dispute an unjustified IUU label for a U.S. vessel?

Answer. The Port State Measures Agreement does not provide for the establishment of an IUU fishing vessel list. If officials of a port State Party to the Agreement threatened to falsify the results of an inspection report as a means of extracting money from U.S. vessels, the vessels' owners might be able to seek recourse under the laws of the port State. In addition, Parties to the Agreement are bound by the dispute settlement provisions in Part 7 of the Agreement which would allow the U.S. Government to seek redress.

Question. Current law appears to identify nations rather than vessels which are involved in IUU fishing practices. Yet the High Seas Driftnet Fishing Moratorium Protection Act allows for the denial of port privileges to vessels. Is this a disconnect that needs to be addressed?

Answer. We understand that the Department of Commerce has also received this question. We defer to Commerce for an appropriate response to this question.

Question. The High Seas Driftnet Fishing Moratorium Protection Act already includes authority for the Secretary of the Treasury to deny entry "to any place in the United States and to the navigable waters of the United States" to any vessel conducting large-scale driftnet fishing or illegal, unreported, or unregulated fishing beyond the exclusive economic zone of any nation. Why is additional legislation necessary?

Answer. We understand that the Department of Commerce has also received this question. We defer to Commerce for an appropriate response to this question.

Question. Mr. Lagon notes in his testimony that labor practices and human trafficking are a problem for some foreign fishing fleets. Under the legislation being considered today and under existing statutory authorities, could labor practices be a criteria for labeling a vessel as an IUU vessel? If so, how could a U.S. importer

possibly know whether fish he was buying from a foreign processor had been purchased from a vessel that had unfair labor practices?

Answer. IUU fishing is by definition a clandestine activity. As such, IUU fishing vessels often engage in other criminal activity, including labor abuses, human trafficking and trafficking of wildlife or drugs. But these other activities are not themselves IUU fishing, either according to the internationally agreed terms contained within the Port State Measures Agreement or existing domestic statutes. Nonetheless, the Port State Measures Agreement can be an effective tool to combat labor abuses and trafficking—as well as IUU fishing—through the increased scrutiny it will put on foreign fishing vessels seeking access to port. A key part of the Agreement establishes minimum standards for nations to inspect a certain proportion of foreign fishing vessels in their ports and sets out how those inspections are to be conducted. Any information these inspections turn up about other criminal activity will be invaluable for port States to be able to act against it.

Question. Mr. Lagon notes in his testimony that there is a problem with Mexican fishing vessels fishing in U.S. waters. This is illegal under current law so what is being done by NOAA and the State Department to address this issue? What additional remedies would these bills give enforcement agents that do not currently exist?

Answer. The problem of Mexican vessels fishing in U.S. waters is primarily limited to small, open-hulled speedboats (“lanchas”) that cross into the U.S. waters from Mexico in the Gulf of Mexico. This is a longstanding issue that State, NOAA and the U.S. Coast Guard raise with our Mexican counterparts on a regular basis. NOAA is the lead enforcement agency for the enforcement of the Magnuson-Stevens Fisheries Conservation and Management Act, which these lancha incursions violate. The Coast Guard performs the majority of at-sea enforcement activities in coordination with NOAA and has numerous interactions with such vessels each year. Whenever lanchas are successfully interdicted in U.S. waters the vessel, catch and gear are seized and escorted to Coast Guard Station Corpus Christi; some are able to avoid interdiction and run back into Mexican waters. Our cooperation with Mexican authorities is good and we continue to work with them to seek a long-term solution to this problem. As noted, this activity is already illegal and we don’t expect that the bills currently under consideration would affect this particular aspect of our enforcement efforts.

Dr. FLEMING. Thank you, Ambassador Balton.
And now the Chair recognizes Mr. Smith for 5 minutes.

STATEMENT OF RUSSELL SMITH, DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL FISHERIES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

Mr. SMITH. Thank you, Mr. Chairman.

Good afternoon, Mr. Chairman, Ranking Member Sablan, and members of the committee, other Members of Congress. Thank you for the opportunity to testify before you today.

My name is Russell Smith. I am the Deputy Assistant Secretary for International Fisheries at NOAA.

Marine fish and fisheries are vital to the prosperity and cultural identity of coastal communities in the United States. They play an enormous role in the U.S. economy. To ensure the long-term benefits of fishery resources, NOAA relies on clear science-based rules, fair enforcement, and shared commitment to sustainable management.

The application of these standards into federally managed fisheries has resulted in significant progress in ending overfishing and rebuilding our Nation’s fisheries.

As a global leader in sustainably managed fisheries, the United States continues to translate our domestic fisheries management

practices into international norms. Working in collaboration with the Department of State, the U.S. Coast Guard and other parts of the U.S. Government, NOAA works to ensure that global fish stocks, including those that United States shares with others, are also sustainably managed.

One of the great challenges of these efforts is illegal, unreported or unregulated fishing. IUU fishing is a global problem that threatens the ocean ecosystems and impacts fisheries, food security, and coastal communities around the world.

Experts estimate that global value of economic losses from IUU fishing ranges between \$10 and \$23 billion. By circumventing conservation and management measures, IUU fishing undercuts the sustainability of international and U.S. fisheries and delivers illegally caught product to global markets that then unfairly compete with legally harvested fish.

It is imperative that the United States takes steps to eliminate the economic incentives for engaging in IUU fishing by closing our market to these products. Although the Administration has not yet taken a position on H.R. 69, the IUU Fishing Enforcement Act, it looks forward to working with Congress to find ways to achieve the objectives of the Act, including by strengthening international conservation and management of fish stocks and combating IUU fishing.

Title I of the bill would harmonize enforcement provisions among various statutes that implement regional fisheries conservation and management and other international fisheries agreements to which the United States is a party. This could provide a more consistent enforcement response to violations of any of the applicable statutes and ensure that the penalties that may be assessed are large enough to deter violations and are not merely a cost of doing business.

H.R. 69 would also provide new enforcement tools designed to enhance the agency's ability to detect imports of fish and fish products that were harvested or imported illegally and would strengthen the ability of the United States to address fishing activities and concerns by vessels flagged to foreign nations.

H.R. 69's provisions also enhance our international cooperation and assistance activities and enhance our ability to share data to combat IUU fishing and improve fisheries management under circumstances that protect against unintended or unauthorized disclosure.

Finally H.R. 69 provides the authorities needed to implement the Antigua Convention, which will improve management of tuna and tuna-like species in the Eastern Pacific Ocean. We support the efforts of this committee to adopt legislation providing additional authorities to support the U.S. leadership in efforts to sustainably manage fisheries and prevent, deter, and eliminate IUU fishing.

The Administration also has no position on the Pirate Fishing Elimination Act at this point, which would allow the United States to implement the provisions of the Port State Measures Agreement. This agreement is the first binding global instrument specifically focused on combating IUU fishing. It recognizes that all fish must pass through a port to get to the market, and that port States can take cost effective measures to combat IUU.

We have had experience with the implementation of most of the substantive measures in the agreement, as most are already authorized under U.S. law, albeit in a more limited context. Ratification and implementation of the Port States Agreement by the United States will demonstrate strong leadership in the global battle against IUU fishing and position our Nation to encourage ratification and implementation by other countries.

While the Administration has also not taken a position on H.R. 2646, my understanding is that if enacted, this legislation would direct the Secretary of Commerce to issue a fishing capacity reduction loan to refinance the existing loan funding the Pacific Coast Groundfish Fishing Capacity Reduction Program.

In 2003, Congress authorized a \$46 million buyback program which permanently removed 91 vessels and 239 permits for 450.7 million from the groundfish trawl fishery and associated ancillary fisheries of Dungeness crab and pink shrimp off the California, Oregon and Washington coasts.

We understand that the buyback payments and other mandatory payments are a substantial portion of the industry's operational costs, perhaps making it difficult for the fishery to continue to operate. As such, NOAA is supportive of the purpose of this bill, "to conserve the West Coast groundfish fishery and the coastal economies in California, Oregon and Washington that rely on it."

NOAA would be glad to work with the committee and industry to ensure the buyback program is as efficient as possible.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF RUSSELL F. SMITH III, DEPUTY ASSISTANT SECRETARY FOR INTERNATIONAL FISHERIES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Introduction

Good morning Mr. Chairman and members of the committee. I am Russell Smith, Deputy Assistant Secretary for International Fisheries at the National Oceanic and Atmospheric Administration (NOAA), within the Department of Commerce. Thank you very much for the opportunity to come before you today to discuss several pieces of legislation pending before the committee.

Before I address the bills being considered by the committee, I wish to provide some context about the importance of marine fish and fisheries to the U.S. economy and culture. Marine fish and fisheries, such as salmon in the Pacific Northwest and cod in New England, have been vital to the prosperity and cultural identity of coastal communities in the United States. U.S. fisheries play an enormous role in the U.S. economy. Commercial fishing supports fishers and fishing communities, and provides Americans with a sustainable, healthy food source. The seafood industry in the United States—harvesters, seafood processors and dealers, seafood wholesalers and seafood retailers, taking into account imports and multiplier effects—generated \$129 billion in sales impacts and \$37 billion in income impacts, and supported 1.2 million jobs in 2011.¹ Recreational fishing also makes significant contributions to employment and the economy in the United States. Recreational fishing generated an estimated \$56 billion in sales impacts, \$18 billion in income impacts, and supported 364,000 jobs in 2011.² Subsistence fishing provides an essential food source and is culturally significant for indigenous peoples.

To ensure the long-term availability of these resources for the American people, NOAA relies on clear, science-based rules, fair, effective and consistent enforcement, and a shared commitment to sustainable management. Much of this work occurs under the Magnuson-Stevens Fishery Conservation and Management Act

¹ See Fisheries Economics of the U.S. 2011. NMFS Office of Science & Technology, available at: http://www.st.nmfs.noaa.gov/economics/publications/feus/fisheries_economics_2011.

² Sabrina J. Lovell, Scott Steinback, and James Hilger. 2013. The Economic Contribution of Marine Angler Expenditures in the United States, 2011. U.S. Dept. Commerce, NOAA Tech. Memo. NMFS-F/SPO-134, 188 p.

(Magnuson-Stevens Act), which sets forth standards for the conservation, management and sustainable use of our Nation's fisheries resources. The application of these standards has resulted in a Federal fishery management system that has made very significant progress in ending overfishing and rebuilding our Nation's fisheries.

The United States is now the world's largest importer of seafood.³ In 2011, seafood imports contributed 176,000 jobs, \$48.4 billion in sales impacts, and \$14.8 billion in value added impacts.⁴ As such, the United States is in a unique position to support sustainable fisheries around the world while providing a level playing field for our domestic fishermen. To achieve this, it is imperative that the United States take steps to eliminate the economic incentives for engaging in illegal, unreported, or unregulated (IUU) fishing by closing our market to products from those IUU fisheries. Working in collaboration with the Department of State and the U.S. Coast Guard, NOAA engages in international fisheries fora, such as Regional Fisheries Management Organizations (RFMOs), to ensure that shared fish stocks are sustainably managed, including by ensuring that management is based on the best available science. As the United States is a leader in sustainably managing fisheries, we regularly draw from our domestic experience and convince RFMOs to apply, in the waters under their jurisdiction, management measures comparable to those applied in U.S. waters.

One of the greatest challenges to our international efforts to ensure the sustainable management of global fisheries is combating IUU fishing. IUU fishing is a global problem that threatens ocean ecosystems and impacts fisheries, food security, and coastal communities around the world. Experts estimate global economic losses from IUU fishing range between \$10 and \$23.5 billion.⁵ By circumventing conservation and management measures, companies and individuals engaging in IUU fishing cut corners and lower their operating costs, impacting not just target species, but also species taken as bycatch, as well as marine habitat. As a result, their illegally caught products provide unfair competition for law-abiding fishermen and seafood industries in the marketplace, and can undercut the sustainability of international and U.S. fisheries.⁶

H.R. 69—Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2013

The Administration has not taken a position on H.R. 69, the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2013. However, NOAA has and will continue to strive to achieve the objectives of the Act, namely strengthening the international conservation and management of fish stocks and combating IUU fishing.

Title I of the bill's provisions would harmonize the enforcement provisions amongst the statutes that implement regional fisheries conservation and management and other international fisheries agreements to which the United States is a party. In some cases, the enforcement provisions of these laws have not been updated in several decades. It would incorporate the enforcement provisions of the Magnuson-Stevens Act by reference, providing more consistent enforcement across all of the statutes to which it applies and increase penalties that can be applied proportionally to effectively deter illegal conduct and reflect the damage to the ecosystem from IUU activities. Differences among the various statutes implementing our international fisheries agreements create inconsistencies in how IUU fishing situations can be investigated and prosecuted depending upon which international agreement is involved. NOAA also supports enactment of stronger enforcement provisions to provide a fuller complement of administrative, civil judicial, and criminal enforcement remedies that could be used as appropriate to address IUU violations. Having the ability to seek civil judicial or criminal sanctions, in addition to administrative sanctions, would enable the United States to respond more appropriately to violations of differing levels of severity and would strengthen our enforcement efforts in the international arena.

In addition, the bill authorizes new enforcement tools related to detecting imports of fish and fish products that were harvested or imported illegally. Similarly, it also increases information sharing and coordination among the agencies involved in

³ See February 2014 U.N. Food and Agriculture Organization FACT SHEET: International fish trade and world fisheries at ftp://ext-ftp.fao.org/FL/Data/cofi_ft/COFI_FT_Factsheet.pdf.

⁴ See Fisheries Economics of the U.S. 2011, at 7.

⁵ Agnew D.J., J. Pearce, G. Pramod, T. Peatman, R. Watson, et al. (2009). Estimating the worldwide extent of illegal fishing. PLoS ONE, 4(2): e4570.

⁶ United Nations Office of Drugs and Crime. *Issue Paper—Transnational Organized Crime in the Fishing Industry*, http://www.unodc.org/documents/human-trafficking/Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf. 2011.

international fisheries enforcement. The bill would also authorize new enforcement and rulemaking authorities.

Current law only authorizes the identification of a nation for IUU fishing if two or more of its fishing vessels have engaged in IUU fishing within the specified time period. H.R. 69 would expand the timeframe that NOAA can consider in our identification process to 3 years. Expanding the time period to 3 years would also enhance the agency's ability to identify countries for bycatch of finfish and protected species.

H.R. 69 also provides the authorities to implement legislation for the Convention for the Strengthening of the Inter-American Tropical Tuna Commission (Antigua Convention). The Antigua Convention is an international agreement that provides updates to the mandate and functions of the Inter-American Tropical Tuna Commission (IATTC), which manages tunas and other highly migratory species in the eastern Pacific Ocean. The convention which created the IATTC, and which is being updated by the Antigua Convention, was adopted in 1949. As a result of strong U.S. leadership, the Antigua Convention contains modern principles and reflects the duties and responsibilities of nations to cooperate toward ensuring the sustainable management of shared fisheries resources and to conserve marine ecosystems on which sustainable fisheries depend.

H.R. 69's provisions also authorize the sharing of fisheries data to combat IUU fishing and improve fisheries management. NOAA is concerned with the sustainability of foreign fisheries that supply our market and support jobs within the U.S. market. Since many fish stocks move within and beyond national jurisdictions, and since such a large proportion of all seafood is traded internationally (nearly 40 percent, per FAO), NOAA must work in cooperation with our international partners to help ensure that these fisheries are sustainable. Our international cooperation and assistance activities have multiple benefits. We work on building relationships with our international partners to support strong management and enforcement regimes that ultimately support our U.S. seafood interests and more generally bolster our own economic well-being.

I would like to share a case I find particularly interesting to help showcase the work we do to combat IUU fishing. In 2011, a number of individuals and companies in the Gulf of Mexico region were sentenced for engaging in a large scale seafood smuggling enterprise. In this scheme, the defendants conspired to illegally import and sell fraudulently labeled Vietnamese catfish as grouper or other more valuable species. They did this to avoid Federal import tariffs associated with Vietnamese catfish, which would have been approximately \$9.3 million in this case, and because the market price of grouper is much higher, generally more than double, that of Vietnamese catfish. The defendants illegally imported more than 10 million pounds, or \$15.5 million worth of frozen fish fillets. These illegal activities, and those like it, displace legitimate, legally produced domestic fish product and create an uneven playing field in the U.S. market. Our criminal prosecution of the defendants supported the interests of our domestic fishermen and highlights the importance of having access to the enforcement tools necessary to combat IUU fishing.

I applaud the efforts of this committee in highlighting the problem of IUU fishing. We look forward to working with the committee to address IUU fishing.

Port States Agreement

The Administration has not taken a position on the Pirate Fishing Elimination Act, which authorizes implementation of the Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement). The Port State Measures Agreement is the first binding global instrument focused specifically on combating IUU fishing. It recognizes that all fish must pass through a port to get to market and that port States can take cost-effective measures to combat IUU fishing. IUU fishing deprives law-abiding fishermen and coastal communities around the world of up to an estimated \$23.5 billion of seafood and seafood products every year,⁷ and undermines efforts to monitor and sustainably manage fisheries. It also threatens the food security of some of the poorest countries in the world as well as in the United States and interferes with the livelihood of legitimate fishers around the world. Seafood caught through IUU fishing enters the global marketplace through ports all around the world. Preventing that fish from entering the stream of commerce requires an international solution and the cooperation of countries throughout the world.

The Port States Agreement is recognized within the international community as a landmark in the effort to combat IUU fishing. The United States was a primary participant in its negotiation and was one of the first countries to sign it. We took

⁷Agnew D.J., J. Pearce, G. Pramod, T. Peatman, R. Watson, et al. (2009). Estimating the worldwide extent of illegal fishing. PLoS ONE, 4(2): e4570.

a leadership role because we recognized how important taking these measures are for nations that want to ensure that product entering their ports has been legally harvested and is safe for consumers. We have had experience with the implementation of most of the substantive measures in the agreement as most are already authorized under U.S. law, albeit in a more limited context.

The Agreement has already had significant impact on efforts to combat IUU fishing, influencing the adoption of similar measures by various RFMOs and providing a model for nations, developing nations in particular, to follow in establishing or strengthening dockside inspection programs. However, the full effect of the Port States Agreement as a tool to combat IUU fishing will not be realized until its entry into force, which requires ratification by 25 nations or regional economic integration organizations. So far, 10 have done so. Ratification, and implementation, of the Port States Agreement by the United States will demonstrate strong leadership in the global battle against IUU fishing and will position the United States to encourage ratification and implementation by other countries.

The Agreement sets forth minimum standards for the conduct of dockside inspections and training of inspectors and, most significantly, requires parties to restrict port entry and port services for foreign vessels known or suspected of having been involved in IUU fishing, particularly those on an RFMO IUU fishing vessel list. These minimum standards would increase the risks and costs associated with IUU fishing activities and help to ensure that IUU fish and fish products do not enter into global trade. Implementation of the Port States Agreement will ultimately benefit U.S. fishermen, seafood buyers, and consumers by preventing IUU vessels from entering our ports and diluting the market with illegal product.

The Port States Agreement has four primary sets of obligations that Parties are required to apply vis-a-vis foreign flagged fishing vessels (including support vessels) seeking entry to a Party's port and these are reflected in the legislation that was transmitted to Congress:

- Parties are required to designate ports to which foreign flagged vessels may seek entry, to require that certain information be collected and considered, and to establish a process for granting or denying port entry and/or the use of port services to foreign flagged fishing vessels;
- Parties must maintain the capacity to conduct dockside vessel inspections in the designated ports and adhere to minimum standards for the conduct of inspections and the training of inspectors. A sufficient number of inspections must be conducted to satisfy the objective of the Agreement;
- Subject to certain limited exceptions, Parties must deny port entry and the use of port services to vessels that have been engaged in IUU fishing, including as indicated by inclusion of the vessel on an RFMO IUU Vessel list. Importantly, the limited exceptions include allowing port entry exclusively for enforcement purposes or in the event of force majeure; and,
- Parties are required to share information, including inspection results, with the flag States and, as appropriate, other relevant Parties and entities, as well as to take follow-up actions as requested by the flag State when evidence of IUU fishing is found during the course of an inspection.

NOAA would be the lead agency for U.S. implementation of the Port States Agreement. Primary responsibility to carry out its obligations, particularly those related to vessel inspections, will fall on NOAA's National Marine Fisheries Service (NMFS), Office of Law Enforcement, in collaboration with the U.S. Coast Guard, which has Captain of the Port authority for the United States. Importantly, the minimum standards set by the Port States Agreement track closely to what the United States already does. Under the Port States Agreement, these best practices would become common practice around the world, thereby effectively closing the so-called ports of convenience that IUU fishing operators use to land their fish and support their activities. As a global leader in sustainable fishing practices, and the third largest importer of seafood in the world, the United States has a responsibility to ensure the fish we import is caught legally. The United States also has a responsibility to protect our domestic fishermen from unfair competition and ensure consumer confidence in the seafood supply by keeping illegal product out of the market. The Port State Measures Agreement marks a significant step forward on both of these counts.

The United States, with our strong legal frameworks, experience in effective port management and robust fisheries law enforcement, has been assisting developing nations in their preparations for implementation of the Agreement. NOAA has most recently assisted Indonesia in its development of training curriculum for fisheries inspectors who will carry out inspections under the Agreement. Additionally, the United States has strongly promoted the adoption of measures in RFMOs that

strengthen port related measures, in accordance with the Agreement. These efforts promote the success of the Agreement and thereby reduce the amount of IUU product entering our domestic markets.

H.R. 2646, Revitalizing the Economy of Fisheries in the Pacific Act

The Administration also has not taken a position on H.R. 2646. If enacted, I understand that this legislation would direct the Secretary of Commerce to issue a fishing capacity reduction loan to refinance the existing loan funding the Pacific Coast groundfish fishing capacity reduction program. The Administration is still reviewing the bill for policy impacts and consistency with Federal credit reform requirements.

In January of 2011, the West Coast groundfish fishery transitioned from a derby fishery, with fleet-wide quotas and trip limits, to a catch share program with individual quotas that promote individual flexibility and accountability. This catch share program has been largely successful from a conservation perspective, with fishermen staying within annual catch limits and reducing bycatch of overfished species. Results from 2012 indicate a substantial reduction in the amount of bycatch and catch of unwanted species; it remains lower than the two prior years structured under trip-limit management. At the same time, results show that the groundfish fleet was able to catch a greater percentage—29 percent—of their non-whiting target species, which is up from 24 percent in 2011. This result highlights the increased diversity of the landings and the fishermen's ability to target new areas and markets. NMFS is pleased with the conservation results seen in this fishery, and we are also sensitive to the concerns of fishermen about the impacts of the new program with regard to their costs to participate.

NMFS is supportive of the underlying rationale contained in the purpose of the bill, which is to "conserve the West Coast groundfish fishery and the coastal economies in California, Oregon, and Washington that rely on it." NMFS would be glad to work with the committee on ways to best achieve this.

Conclusion

We look forward to working cooperatively with the subcommittee on how best to address the issues and achieve the goals that are being discussed here today. I will be happy to answer any questions.

Dr. FLEMING. I am sorry, Mr. Smith, but we have gone over time, and your entire statement will be submitted for the record, and so we thank you.

And we certainly are anxious to ask questions and really get to the bottom of all of this and talk about three very interesting bills.

At this point we will begin questioning of witnesses, and members are, of course, limited to 5 minutes for their questions as well. We may have another round, and certainly we have a whole other panel we are going to go to as well, and we are still waiting to see what the Floor action is about and when we will be voting.

I now recognize myself for 5 minutes.

This is to either or both gentlemen, whoever feels best qualified to answer the questions.

Several of today's witnesses used the statistic that IUU fishing accounts for between \$10 and \$23 billion per year. Presumably IUU vessels are targeting high value fish species. How is it that we cannot identify the specific vessels that are targeting these fisheries and/or countries where the fish are entering the market?

Ambassador BALTON. Thank you, Mr. Chairman.

I can start. In fact, IUU fishing at some level probably exists in virtually every fishery around the world. No fishery has 100 percent compliance rate, but I think what you are getting at is where are the biggest problems, and the truth is that we do have a better sense of where the real problems are now.

At the international level, a series of regional fishery management organizations have been in the process of identifying vessels engaged in IUU fishing, and indeed, a feature of our lives these days are lists of IUU vessels, vessels that have committed IUU fishing or fishing-related activities.

And, indeed, the Port State Measures Agreement requires port States to take action against such vessels primarily by refusing to allow them to land, transship, package or process their fish in their ports.

Mr. SMITH. So if I might add to Ambassador Balton's comments, one of the things that we should keep in mind is the United States imports over 90 percent of its seafood. So much of the fish that is coming into our markets is landed in other ports where there are not some of the same safeguards against the landing of IUU fish that we have in our markets.

So it is difficult for us to always ensure that what is coming into our markets has not been caught illegally. We do have some indications. We do take a number of steps, including based on where we purchase our fish, our work within the RFMOs to encourage compliance.

Dr. FLEMING. But again, back to my base question, why do we not have better information as to the source, the origin of these ships, the countries and so forth?

Is it just very difficult and we do not have the technology to determine this?

Mr. SMITH. So it is difficult because we have the vast oceans, and we only have limited control over these vessels. As Mr. Balton pointed out, we do have—

Dr. FLEMING. Well, let me give you a specific example. For years the committee has heard concern about the IUU harvest of Russian crab. This was a real world example of the effect of IUU fishing on the United States.

Why was Russia not identified as an IUU nation in the latest report to Congress?

Mr. SMITH. Because based upon the criteria set out in the High Seas Driftnet Fisheries Enforcement Act, we were not able to identify Russia. We are trying to find other ways and we were trying to find other ways to work with Russia to address this issue, and we have, in fact, done some collaboration to stop shipments that are coming from Russia to the United States of IUU crab.

But with respect to identifying them under the High Seas Driftnet Fisheries Enforcement Act, they did not meet the criteria.

Dr. FLEMING. OK. The Nicholson Act allows foreign fishing vessels to land fish in limited ports in the U.S. territories. How would the legislation affect fisheries trade at these ports?

Ambassador BALTON. The legislation, if passed, would broaden the authorities to ensure that we have controls in place with respect to all U.S. ports where foreign vessels are allowed to land fish.

You were right that the Nicholson Act generally prohibits foreign fishing vessels and some foreign transport vessels from landing fish in most U.S. ports, but there are some exceptions. There also are other categories of vessels that could be carrying fish or are otherwise involved in IUU fishing problems that are not expressly

covered in U.S. law. The draft bill under consideration before the subcommittee would close these loopholes.

Dr. FLEMING. OK. All right. Thank you.

My time is just about out. I will yield to the Ranking Member, Mr. Sablan, for 5 minutes.

Mr. SABLAN. Thank you very much, Mr. Chairman.

Mr. Smith, my apologies, sir, for not getting your name right the first time and for not pronouncing NOAA correctly.

[Laughter.]

Mr. SABLAN. But welcome.

Mr. Ambassador, in the Northern Marianas I hear from my fishermen all the time that fish are getting smaller and smaller in order to catch. A lot of this is because of IUU fishing.

How would the legislations before us today help my fishermen ensure that their catch is not being stolen by foreign fleets?

Ambassador BALTON. Generally speaking, U.S. vessels must meet higher standards in engaging in fisheries than some of their foreign competitors. The effect of the Port State Measures Agreement and the legislation that would implement it would have the effect of leveling the playing field and giving legitimate U.S. fishers, including in the Northern Mariana Islands, the same terms and conditions as their foreign competitors.

So that is the basic idea in fighting IUU fishing. In particular, the Port State Measures Agreement seeks to undermine the efforts of IUU fishers by denying them entry in port into the stream of commerce for their fish.

Mr. SABLAN. I will take that response for now.

But, again, Ambassador, would you please discuss the importance of the United States taking a leadership role in the port State measures to encourage other countries, many of which import fish to the United States—90 percent of our fish are imported—so to help cutoff markets for illegally harvested fish?

Ambassador BALTON. Thank you, sir.

In fact, the United States did take a leadership role in the negotiation of the agreement. I actually led the very first meeting to produce the first draft of this agreement, and I was the vice chair of the negotiations that yielded it. We were among the first nations to sign it as well.

But until we ratify the agreement, we cannot maximize the leverage we have with respect to other governments to ensure that they live up to the commitments of it. That is why it is so vital for us to join the agreement now.

Mr. SABLAN. Thank you, Ambassador.

Mr. Smith, in the Pacific, bluefin tuna are highly prized and subject to heavy fishing pressure, both legal and illegal. With stocks at less than 4 percent of their historic levels, it is a real possibility that this species could become extinct at least in a commercial sense within our lifetime.

So how would H.R. 69, an implementation of the Port State Measures Agreement, help conserve Pacific bluefin?

Mr. SMITH. Thank you, Mr. Sablan.

And, yes, bluefin in the Pacific are in the trouble, and we need to address their health. I think that both bills, to the extent that there is IUU fishing going on, help to remove the economic incen-

tive by eliminating markets for illegally harvested bluefin, and by when it is coming into the United States and is detected, allowing us to take stronger action against those that are illegally importing it.

Mr. SABLON. And maybe we could increase that one boat and have a little bit more presence. Coast Guard presence also may help.

But you know, we have also seen crabbers in Alaska, shrimpers in the Gulf of Mexico, and fishermen across the country have the prices they get for their fish undercut by intentionally mislabeled and illegally caught seafood imported from overseas. So do you think we have a responsibility to ensure the legality and authenticity of fish sold in the United States?

Mr. Smith?

Mr. SMITH. Thank you, Mr. Sablan.

And yes, we have in place a number of mechanisms for ensuring that there is no seafood fraud, that we do as well as we can to ensure that the catch that is being sold here has been legally harvested. H.R. 69 and the Port State Measures Act will give us additional tools with which we can address these important issues.

Thank you.

Mr. SABLON. Thank you.

Mr. Chairman, I am out of time. I yield back.

Dr. FLEMING. The gentleman yields back.

The Chair now recognizes Mr. DeFazio, Ranking Member of the Full Committee for 5 minutes.

Mr. DEFAZIO. Thank you, Mr. Chairman.

Mr. Smith, you were talking about H.R. 2646 at the end of your statement there, and I believe you said something to the extent of perhaps making it difficult for the economic viability of the industry, the current terms, and then something about supporting in concept.

What reservations or concerns does the Administration have that they cannot wholly endorse this legislation?

Mr. SMITH. I do not think that we have any reservations about the ideas behind the legislation or what it needs to achieve. We simply have not had the time to go through our process of reviewing and commenting on the legislation.

I believe that even in our initial look at it, there are perhaps some suggestions that we would have for drafting, and I believe that our staff has spoken with your staff about those suggestions, but as a basic point, we support the objective of the legislation, what the legislation is trying to achieve.

Mr. DEFAZIO. OK. Well, you have the principal author of the bill here and myself and Mr. Huffman. We would be happy to entertain any suggestions, but it is our hope that the committee will consider this legislation in the very near future and send it to the Floor. So we need to do this on an expedited basis.

I mean, some of these people are just barely hanging on, and for a lot of people the difference in the percent of their landings, the value that they will have to pay does not sound like a lot, but to them it is a difference between whether they stay in the business or not, and it would be a shame to drag this out and not save people this year as soon as possible.

And you are and do agree that the only way forward is, in fact, a legislative fix? Because we have tried numerous times and have asked the previous Administration and this one to look at administrative fixes, but apparently there are none.

Mr. SMITH. Yes, sir. We do not believe that there are any ways that we can administratively change this law. We need new legislation.

Mr. DEFAZIO. OK. Now, as I understand, and I assume you are going to be reluctant to answer this, but you worked on international environmental policy in the USTR's office. I have had the pleasure of meeting with the USTR in a number of venues to express strong concerns about the TPP and one of my many, many concerns about that agreement relates to the environmental section.

You know, it seems to me that we are talking here about the IUU fishing, and we seem to be all on the same page there and wanting to have the best, most comprehensive measures, whether it is port State or mid-ocean, to prevent this.

Do you think that the language that has been published publicly regarding the environmental compliance section is adequate to meet those concerns about illegal fishing?

Mr. SMITH. So thank you for the question, sir.

I am not really in a position to comment specifically on that.

Mr. DEFAZIO. OK.

Mr. SMITH. On that language that has been tabled.

Mr. DEFAZIO. You take the Fifth on that one?

Mr. SMITH. I will say though that consistently we have taken the position that trade and environment need to be mutually supportive; that our trade agreements need to have strong environmental commitments to ensure that increased trade does not undermine environmental protections and that those strong commitments include the need to have commitments by the parties to enforce their environmental law.

And we have taken the position that those commitments need to be enforceable through the trade agreement based upon the same terms as other commitments made in the trade agreements. So the same dispute resolution mechanism needs to apply.

So I think that the position of the Administration is that, yes, strong environmental provisions are needed and that including covering things such as IUU fishing and stopping shark finning are appropriate.

Mr. DEFAZIO. OK. Thank you.

Thank you, Mr. Chairman.

Dr. FLEMING. I thank the gentleman.

Do we have a motion?

Mr. SABLON. Yes, Mr. Chairman. If I may, I ask unanimous consent that Congresswoman Colleen Hanabusa be allowed to participate in the subcommittee hearing today.

Dr. FLEMING. Without objection, so ordered.

Mr. SABLON. Thank you.

Dr. FLEMING. The Chair now recognizes Mr. Huffman for 5 minutes.

Mr. HUFFMAN. Mr. Chair, I will waive at this time.

Dr. FLEMING. Then the Chair recognizes Ms. Hanabusa if she has questions.

Do you have? OK.

Ms. HANABUSA. Thank you, Mr. Chair, and thank you, members of the committee, for agreeing to allow me to participate today.

Either Ambassador or Mr. Smith, the Port State Measures Agreement, as I understand it, is modeled after current U.S. practice, and given that, how do we expect the U.S. ratification to affect IUU fishing?

And also, can you elaborate on our efforts to assist other States in achieving the standards under the Port State Measures Agreement?

Ambassador BALTON. Thank you very much, Madam Hanabusa.

I will put it this way. The Port State Measures Agreement is at heart an effort to bring other countries up to U.S. standards when it comes to denying entry to IUU fish in our ports. The United States already does most everything the agreement calls for.

We do think that there is legislation necessary to close some gaps in our domestic authorities, but the big picture is that we are not a major port of entry for illegally harvested fish. Those tend to come to land in other countries. By ratifying the agreement, we will be in a much better position to encourage other countries, in effect, to do what we do.

And, yes, we already do help them in this way, both bilaterally and also through multilateral organizations, such as the food and agriculture organizations.

Ms. HANABUSA. I guess the question is that what we really want all the other States to do is to come up to the U.S. standard.

Ambassador BALTON. Yes.

Ms. HANABUSA. But I am pretty sure you have heard it from many of our U.S. fishermen who comply, is the fact that the others are engaged in IUU and that what then goes into maybe more Mr. Smith's area, is that then that affects, of course, things like catch shares and quotas and so forth because you are having this IUU problem.

So I guess it comes back to the same question, which is how is it that you are going to be able to bring others up when they know what the standards are? They can comply with it if they want, but countries are choosing to engage in IUU.

So how is it that by having this agreement we are actually going to see a change when we have not seen one to date?

Ambassador BALTON. All fish caught at sea must ultimately come to port in order to enter the stream of commerce. This agreement, if widely ratified and properly implemented, will prevent that from happening on a large scale, and that will deprive IUU fishers of the economic benefit of what they do.

And that should, right, redound to the benefit of legitimate fishers, including here in the United States.

Ms. HANABUSA. I have a question about, I think in the Shark Conservation Act of 2010, NOAA provided a new definition of IUU fishing based on not only actions of particular fishing vessels but also on actions of the "flag States," in other words, the countries themselves.

And how is NOAA using the new definition of IUU in developing that biannual report that you are going to be sending to Congress or any of the other capacities?

In other words, how are you using that, Mr. Smith?

Mr. SMITH. So thank you for the question.

The report coming up in 2015 will be the first time that we will be using that definition, and obviously we will be looking beyond whether individual vessels are engaged in IUU fishing to see what it is the countries are doing to try and address it, how they are trying to deal with systemic issues, and that was the intent of expanding the definition.

Ms. HANABUSA. And I guess we still always come back to the same question at the end, which is: all right, we have maybe agreement, we have these standards, but nothing is good unless there is an enforcement provision in it.

So the enforcement that we are looking at for the whole IUU area is basically that they are going to have difficulties coming into, for example, our ports, which I think you said earlier we are not the problem? But is that going to be it?

Because I think the question we have always had, especially in the Pacific, has always been our Coast Guard does a great job on our fishing vessels, but who is doing everybody else?

So, we have the greatest policing mechanism in the country that is not violating any treaties or is not violating or engaging in IUU, but what about the countries that are?

I guess I am having difficulty understanding how it is just going to work by saying you are not going to have access to our ports.

Mr. SMITH. I think we are trying to create multiple levels of enforcement here and of obligation here. By bringing the Port State Measures Agreement into force and creating an obligation on countries to keep this food out of their ports, that is one level of obligation.

We have measures in the RFMOs, and, yes, in some cases those have been difficult to enforce, but that is a second level of obligation that we have created in a mechanism for enforcement.

And then we do have the High Seas Driftnet, which is our own tool.

Dr. FLEMING. The gentlelady's time is up.

We are going to vote in a moment, but we will take one more set of questions. Ms. Herrera Beutler, for 5 minutes.

Ms. HERRERA BEUTLER. Thank you, Mr. Chairman.

And this is for Mr. Smith kind of following up on what Mr. DeFazio mentioned, reservations. It is not easy to get a bipartisan bill out of both houses, and this one is moving in large part because we all recognize our fishing communities are hurting, and here is a way both to ensure that the loan program is repaid rather than having mass defaults, and, yes, it does change some of the book-keeping, but we believe we are not going to just recoup the original loan, but the government is going to recoup interest. So it should not cost the taxpayer anything.

And it is going to provide a much needed life preserver to these fishing communities, these coastal communities. So I guess I would say, you know, considering that the Pacific Fishery Management

Council has recommended to you all to support this, what is the reservation?

Mr. SMITH. So thank you for the question.

I do not believe it is reservations as to the objectives, as to the potential need for this. I think we have only not had the opportunity to go through our process of reviewing the piece of legislation and signing off on it.

Ms. HERRERA BEUTLER. I apologize. I thought you said you submitted some reservations to Mr. DeFazio's staff.

Mr. SMITH. I think we submitted some comments on the legislation.

Ms. HERRERA BEUTLER. OK.

Mr. SMITH. But not reservations to the legislation.

Ms. HERRERA BEUTLER. OK.

Mr. SMITH. But comments on how to make the legislation work as we believe it is intended to work. So there were, shall we say, technical corrections.

Ms. HERRERA BEUTLER. So you have reviewed it a little bit and it is mostly just technical.

Mr. SMITH. Right. What we have seen so far is technical, but I have to say we have not gone through the Administration's process for getting clearance to say we support the legislation.

Ms. HERRERA BEUTLER. So separate from speaking for the Administration having not gone through the process, in your professional opinion do you believe this legislation if enacted would provide some economic relief for these fishermen?

Mr. SMITH. I am not sure I have that separate personality, but again, I think this is a useful tool and we want to work with Congress to get it right and get these fishermen really—

Ms. HERRERA BEUTLER. I guess I am a little nervous because it is moving, and it is moving in the Senate. It is moving in the House, and you know how long it takes a bill to become an actual law. So that is part of why the Chairman has agreed to hear it today, because we need it to move.

So I guess we would urge that review to happen as quickly as possible if you want to have input into it as it moves through the process.

Mr. SMITH. We look forward to working with you soon.

Ms. HERRERA BEUTLER. Thank you.

Mr. SMITH. Very soon.

Ms. HERRERA BEUTLER. With that I yield back. Thank you, Mr. Chairman.

Dr. FLEMING. The gentlelady yields back.

We are going to recess for votes. We should be only 20 minutes. We want Panel I to stay because we have one other member who will return with us, if you would be patient with us, and have the second panel ready to go as soon as we get back.

With that we are recessed.

[Recess.]

Dr. FLEMING. Well, the committee comes to order.

And we thank our Panel I for sticking around. We have one more member who would like to ask questions, and therefore, the Chair recognizes Mr. Southerland for 5 minutes.

Mr. SOUTHERLAND. Thank you, Mr. Chairman. I appreciate it, and I want to thank Ambassador Balton and Mr. Smith. Thank you both for being here.

I have a quick question or two, Mr. Smith, if I could. Obviously, these rogue individuals that come in and pull from our fisheries, I am just curious. I live on the Gulf of Mexico. So, you know, I live on the water, and there is a constant battle regarding the total allowable catch from different industry groups whether it is commercial fishing, whether it is boats for hire, charter fishing, or whether it is recreational fishing.

Let's say when you have a boat that has been captured and that catch has been taken, sometimes I am sure large amounts of fish, is that counted against a commercial total allowable catch (TAC) or is that counted against the recreational percentage that they are allowed to catch?

I mean, it clearly has been taken out of the fishery as far as the stock, and so we are told oftentimes that, Mr. Chairman, that is a very delicate fishery or the fisheries are very delicate and so, therefore, it has to count against somebody.

Do you know the answer to that question?

Mr. SMITH. Thank you, sir.

I am afraid I do not, but I would be happy to inquire further if you would like.

Mr. SOUTHERLAND. That would be great. If you could do that, that would be extremely helpful. I have asked that question several times and never got an answer. So if you could do that, I would appreciate it.

And then I also want to ask: the draft Port State Measures implementing legislation would allow enforcement agents to conduct search and seizures with or without warrants. Why is this necessary?

Mr. SMITH. I think that is an investigative tool that is used in a number of different situations. It is a common investigative tool.

There are times when you are afraid that if you have to go through the process of getting a warrant, evidence would be destroyed, I would imagine. It would probably be better though if I also inquired further as to the specific reasons for why we might want such provisions.

I do note that this bill is not the Administration bill. It was authored by Mr. DeFazio and others. It has some of the objectives that we would like, but if you would like further information, I would be happy to—

Mr. DEFazio. If the gentleman would yield, actually you do have that authority under the Magnuson Act for domestic fisheries. So it just mirrors the existing Magnuson Act.

Thank you.

Mr. SOUTHERLAND. I thank the gentleman.

The last question, the bill would also allow the Secretary of Commerce to use personnel from almost any Federal-State agency as long as there was an agreement in place to enforce this Act. It also gives the new enforcement officers the ability to conduct search and seizures and enforce any law of the United States.

This seems to be a huge expansion of enforcement authorities, and I guess my question is similar. Why is this necessary?

And I do not know if the answer is the same as the one that the gentleman just gave.

Mr. SMITH. I understand that at least with respect to the use of interagency agreements, it is the same. We have agreements with all of the coastal States except North Carolina, and that it is an important tool for us to accomplish our duties.

We also have agreements, for example, on the border with Customs agents so that we can work together with them to fulfill our obligations.

Mr. SOUTHERLAND. Mr. Chairman, I yield back.

Dr. FLEMING. The gentleman yields back.

Panel I, you are now dismissed. We thank you for your testimony today. We thank you for your patience remaining with us a little bit longer.

And I would ask that Panel II step forward.

OK. I want to welcome our second panel today and to introduce Mr. Brad Pettinger, Director, Oregon Trawl Commission; Mr. James Gerald Neva, Manager, Port of Ilwaco. Am I saying that right?

Mr. NEVA. Ilwaco.

Dr. FLEMING. OK. Good guess, huh?

Washington; Ambassador Mark Lagon, Chairman of the International Relations and Security, MSFS Program, and Professor in the Practice of International Affairs, Georgetown University; Mr. Mike Kraft, VP, Corporate Social Responsibility, Bumble Bee Foods; and Mr. James P. "Bud" Walsh, Davis Wright Tremaine, LLP.

As I am sure you heard earlier in the instructions, your testimony will appear in full in the hearing record. So we ask that you keep your oral statements to 5 minutes, according to Committee Rule 4(a).

Our microphones are not automatic. So please press the button when you speak and make sure the tip is close enough we can hear you, and you will be under the 5-minute light. It will be green for the first 4 minutes, then yellow for the last minute. When it turns red, please go ahead and conclude your comments.

Mr. Pettinger, you are now recognized for 5 minutes, sir.

STATEMENT OF BRAD PETTINGER, DIRECTOR, OREGON TRAWL COMMISSION

Mr. PETTINGER. Thank you, Mr. Chairman, members of the committee.

My name is Brad Pettinger, and I am the Director of the Oregon Trawl Commission.

The Oregon Trawl Commission is part of a unified coalition that represents virtually every trawl permit holder from the West Coast.

I would also like to thank Congresswoman Herrera Beutler, Congressman DeFazio, and Congressman Huffman, as well as all of the legislation's co-sponsors, for their leadership on this important issue.

The original industry-funded buyback loan was authorized by Congress in 2003, and it retired 91 trawl permits from the fishery. The Federal buyback program was sought by the fleet after the

Pacific Council identified capacity reduction as its number one priority in its groundfish strategic plan, but was unable to come up with a workable solution at the council level.

The current loan has a 30-year term, a fixed year interest rate of 6.97 percent, and an annual fee equal to 5 percent of the value of the vessel's landed catch. Unfortunately, once the law was passed, there was a delay of 18 months to develop and implement the regulations to collect payments. This delay resulted in, through no fault of the industry, an additional \$4.23 million in accrued interest being added to the loan.

Over the last 8 years, the industry has struggled to keep pace with the interest and principal obligation of the loan in large part due to the additional interest tacked onto the loan at the outset.

As of February 2014, the groundfish fishery had paid back \$20.74 million, but still owes almost as much as originally borrowed. If regulations to collect the payment fees were implemented in a timely manner when the Groundfish Fishing Capacity Reduction Program was established in 2003, calculations show that the groundfish fishery would owe \$19 million today versus the actual balance of \$27.6 million, a difference of over \$8.5 million.

And those last figures are a correction from my written testimony because I found an error in the written testimony.

As some of you may know, the management of the West Coast groundfish trawl fishery changed dramatically in 2011. A trawl individual quota program was implemented because the management system at that time did not have the tools available to properly manage the fishery. This new Catch Share Program has resulted in a significant decrease of bycatch and discards and allows for increased flexibility and personal accountability for fleet members.

However, with these benefits, there are also additional costs. In order to facilitate personal accountability, 100 percent human observer coverage is required for every fishing trip. The current government reimbursement is set to expire in the near future, and the industry will be responsible for covering 100 percent of the cost associated with these observers.

In addition to the observer cost, the industry is now also subject to a 3 percent cost recovery fee collected by the National Marine Fishery Service for management of the catch share fishery. These fees are in addition to the 5 percent buyback loan payment and any State ad valorem landing taxes. In all, these costs are approaching 18 percent of a fishing business' gross revenues on an annual basis. This is not sustainable.

We cannot control management costs, and we have been unsuccessful in accelerating regulatory relief. Thus, there is an urgent need to refinance the current buyback loan. The industry is not seeking full forgiveness as fisheries in other parts of the countries have, successfully in some cases, but is seeking to take advantage of better interest rates and loan terms in order to give the industry a fighting chance to pay the loan back while keeping their businesses viable in light of all the other costs we face.

The current legislation extends the term of the loan to 45 years, reduces the interest rate to the current Treasury rate, and caps the annual payments to 3 percent versus the current 5 percent.

The legislation has bipartisan support in both houses, as well as strong support from affected permit holders in all three West Coast States. It would ensure that the American taxpayers are paid back in full and that some measure of economic relief is provided to an industry that provides healthy food to consumers and jobs to our coastal communities.

We are not asking for a bailout, nor are we trying to walk away from our obligations. All that we ask is an opportunity to meet that obligation under vastly changed economic conditions and more favorable market terms for borrowing.

We ask that the committee move this bill forward as quickly as possible. Thank you, and I will be happy to answer any questions. [The prepared statement of Mr. Pettinger follows:]

PREPARED STATEMENT OF BRAD PETTINGER, DIRECTOR, OREGON TRAWL COMMISSION

Mr. Chairman, members of the committee, my name is Brad Pettinger and I am the Director of the Oregon Trawl Commission, an Oregon State commodity commission that represents every trawl permit holder in the State of Oregon. Our members participate in the Oregon pink shrimp fishery as well as the federally managed groundfish fishery off the West Coast. Together with other fishery and environmental organizations from the three West Coast States, the Oregon Trawl Commission has been helping to lead a unified effort to refinance the trawl buyback loan for the last several years. Virtually every groundfish trawl permit holder on the West Coast is represented by this coalition and we are all strongly supportive of this effort. I would like to thank Congresswoman Herrera-Beutler as well as Congressman DeFazio and the other co-sponsors of the bill for their leadership on this critically important issue for the West Coast trawl groundfish industry.

Background

In 2000 the Secretary of Commerce declared a commercial fishery failure in the West Coast groundfish fishery due to low stock abundance, a severely overcapitalized fleet and concerns about several species of rockfish, which had been overfished historically by foreign fleets. The Pacific Fishery Management Council acknowledged the overcapacity problem by identifying "capacity reduction" as its number one priority in its Groundfish Strategic Plan. When the Council was unable to achieve a workable solution to reduce capacity, the industry took it upon themselves to approach Congress with a plan to reduce capacity through an industry-funded buyback loan.

Capacity Reduction Program

Section 212 of the Department of Commerce and Related Agencies Appropriations Act, 2003 (title II of division B of Public Law 108-7; 117 Stat. 80) was enacted to establish a Pacific Coast groundfish fishing capacity reduction program, also known as a buyback program, to remove excess fishing capacity. In 2003, Congress authorized the \$35,700,000 buyback loan, creating the Pacific coast groundfish fishing capacity reduction program through the National Marine Fisheries Service finance program with a term of 30 years. The interest rate of the buyback loan was fixed at 6.97 percent and is paid back based on an annual ex-vessel landings fee of 5 percent (this is off the gross revenue that a fishermen is paid by the fish buyer for his fish).

The buyback program resulted in 91 trawl groundfish permits being "bought out" of the fishery. The 91 permits were associated with approximately 46 percent of the groundfish trawl landings at that time. In addition, 36 crab permits and 85 shrimp permits that were associated with the bought out trawl permits were also retired.

Buyback Loan Fees and Accrued Interest

Unfortunately, once the law was passed, there was a delay in the promulgation of the regulations setting up the process for fee collection. This delay resulted in \$4,234,730 in accrued interest before the fleet began paying back on the loan. This \$4.23 million was tacked onto the loan through no fault of the industry members. Eighteen months passed between when the groundfish capacity reduction program was initiated in 2003 and when the fee collection procedures were established and implemented in 2005. Over the last 8 years the industry has struggled to keep pace with the interest and principal obligation of the loan due to previously declining

fishery values and the added interest that was tacked on at the beginning of the loan. Until recently we had made no progress on paying down the principal.

In fact, as of February 14, 2014, the groundfish fishery had paid \$20,746,810, but still owed \$27,664,619—which is only \$764,099 less than what was originally borrowed (\$28,428,718). See Attachment 1.

If regulations to collect the payment fees were implemented in a timely manner when the capacity program was established in 2003, calculations completed by the Fishermen’s Marketing Association based on PacFIN data (compiled by Pacific States Marine Fisheries Commission) show that the groundfish fishery would owe \$16,942,890 today versus the actual balance of \$27,664,619—a difference of over \$10.5 million dollars! See Attachment 2.

The Current Trawl Groundfish Fishery

In 2011 the management of the West Coast groundfish fishery changed dramatically. A trawl individual fishing quota program was implemented. An individual fishing quota program is a type of catch-share program where individual accountability is a cornerstone of management. The trawl IQ program includes 100 percent human observer coverage in order to document all catch and/or discard. Since the program’s implementation there has been a dramatic reduction in bycatch and discards and individual flexibility and accountability has increased.

The majority of the cost of observers is funded by the industry. In 2014 there is a government reimbursement of less than 50 percent of the daily cost which can run between \$425–\$475 per day. This reimbursement is set to run out at the end of 2014 and beginning in 2015 the industry may be responsible for paying 100 percent of the observer costs. To be clear, a fisherman cannot leave the dock without an observer and in the future he will be responsible for the entire cost of the observer coverage. In addition to the cost of observers, the industry is now paying an annual “cost recovery fee” to the National Marine Fisheries Service of 3 percent of the annual ex-vessel value of the fish they land. The cost recovery program was implemented by NMFS in January of 2014. The industry also pays State ad-valorem taxes (landings taxes) and these vary by State. All of these fees plus the annual loan payment of 5 percent will equate to approximately 18 percent of a fishing business’s gross revenue on an annual basis. This is simply not sustainable, especially for smaller operations.

At the same time that we are seeing successes in the fishery under the new management regime, there are still several improvements yet to be implemented within the program, which will increase the economic value of the fishery. In the 3 years since implementation, less than one-third of the available total allowable catch (TAC) of non-whiting groundfish stocks has been brought to shore. The TACs are what can be sustainably harvested from the fishery based on the current biological status of each stock. In other words, we are leaving two-thirds of the fish that could be sustainably harvested in the water each year. The reasons for this vary, but a lot of the fault rests on antiquated regulations enacted before the trawl IQ program was implemented. Many of these regulations are still on the books and upwards of 30 “trawl trailing amendments” are in the works to address both these redundant and irrelevant regulations as well as unintended consequences that have occurred under the new management system. It will be several years before the suite of trawl trailing amendments is completed and implemented; in the meantime it is more difficult for harvesters to achieve higher catch limits and generate more income from the fishery so they can afford the costs noted above.

We cannot control management costs and we have been unsuccessful in accelerating regulatory relief. Thus, there is an urgent need to refinance the current buyback loan. The industry is not seeking full forgiveness as fisheries in other parts of the country have done (successfully in some cases) but is seeking to take advantage of better interest rates and loan terms in order to give the industry a fighting chance to pay the loan back while keeping their businesses viable in light of all the other costs we currently face.

H.R. 2646

The current legislation seeks to refinance the existing loan. The terms of the loan include an extension from 30 years to 45 years, a reduction in the interest rate to reflect the current treasury rate (currently at 3.60 percent) and a cap on the annual loan payment fee of no more than 3 percent (versus the current 5 percent). The legislation has bipartisan support in both houses of Congress, as well as support from affected permit holders in all three West Coast States. It would ensure that the American taxpayers receive a return on the investment they have made in our commercial fishing industry and that the buyback loan will be repaid. Some measure

of economic relief will be provided to an industry that provides healthy food to consumers and jobs to our coastal communities.

Let me emphasize that we are not some huge corporation asking for a Federal bailout nor are we trying to walk away from a loan that was made to get us through difficult times. We undertook an obligation in order to increase our productivity and benefit the Nation and we intend to live up to that obligation. All that we ask is an opportunity to do so under vastly changed economic conditions and more favorable market terms for borrowing long-term debt from the Government. We ask that the committee move this bill forward as quickly as possible.

Thank you. I will be happy to answer any questions.

Dr. FLEMING. Thank you, Mr. Pettinger.

Mr. Neva, you are now up for the next statement for 5 minutes, sir.

**STATEMENT OF JAMES GERALD NEVA, MANAGER, PORT OF
ILWACO, ILWACO, WASHINGTON**

Mr. NEVA. Mr. Chairman and members of the subcommittee, I thank you for the opportunity to speak on behalf of fishing ports and fishing communities along the Pacific Coast.

My name is Jim Neva. I have 20 years of experience as manager of different small ports in rural communities of southwest Washington State.

The economies of these rural communities are heavily dependent upon a healthy fishing industry. It is our history and it is who we are as a community. These were once thriving industries providing robust economies that generation after generation of the local population accepted as a way of life. It is a hard life, but it was in their blood.

A White Paper produced by the Pacific County Economic Development Council last summer reported that, and I quote, "The marine industry sector is an integral part of Pacific County's economic engine and community well-being."

According to a recent regional industry cluster study completed for the Pacific Mountain Workforce Development Council, marine industries account for more than 20 percent of the county's 5,885 jobs and an estimated direct annual payroll in excess of \$41.2 million. The tax revenue from these sales helps to fund country services and the operation of special districts, such as libraries, ports, water, and emergency medical services.

Washington State's commercial fishing industry is structured around a multispecies fishery. Groundfish, halibut, albacore tuna, salmon and shellfish are all major species groups important to the industry. Important species within the groundfish category include whiting, flatfish, rockfish, lingcod and sablefish.

In 2006, non-tribal commercial fish landings from Washington fisheries total nearly 109.4 million pounds, generating \$65.1 million in ex-vessel value, which is the price received by commercial fishers for fish landing at the dock.

Groundfish produced the greatest share of landings, about 54 percent. In terms of regional catch, the coastal area is by far the largest contributor to commercial fish harvesting in Washington, accounting for 85 percent of the total pounds landed and 63 percent of total ex-vessel value.

Seafood processing also contributes significantly to the value of Washington's commercial fisheries. Including in-State processing, the wholesale value of fishery products caught in Washington waters was estimated at \$101 million in 2006. Groundfish accounted for almost 61 percent of that value.

The aggregate number of vessels landing at U.S. West Coast ports has decreased almost 67 percent since 1981. There was a large drop in a count of vessels delivering in the adverse oceanic condition years of 1984 and early 1990s. There were strategic buyout programs for vessels participating in the salmon fisheries in the 1990s, and groundfish fishery in 2003. Vessel counts continued to drop until the late 1990s and have remained somewhat stable since then.

This bill will help alleviate some of the overwhelming burdens that have been placed upon the shore-based groundfish fleet in the last few years. This is largely a question of fairness.

Buyback payments, observer costs, new vessel safety requirements, and other government mandates have crippled the groundfish fleet forcing a level of consolidation that has left Washington State with only five non-whiting trawl boats. The existence of these fleets is critical to the coastal communities that rely on the fishermen for their raw material and the jobs that shore-based processing create. The coastal communities of Washington need all the help we can get.

Our ports and communities have been disproportionately impacted by these Federal management programs, such as the Buyback and the Trawl IFQ Program. This program permanently removed 91 vessels and 239 fishing permits from the groundfish trawl fishery. We have reached a tipping point where without some financial assistance from the government further decline in the fleet will result in further erosion of the coastal fishing infrastructure and corresponding loss of shore-side jobs and facilities.

The REFI Pacific Act is critically important and its passage will have an immediate positive impact, economic effect on our fishing businesses and our rural Washington coast communities who rely on these fishermen.

Thank you very much.

[The prepared statement of Mr. Neva follows:]

PREPARED STATEMENT OF JAMES GERALD NEVA, MANAGER, PORT OF ILWACO,
ILWACO, WASHINGTON

My name is Jim Neva. I have 20 years of experience as Manager of different small ports in rural communities of southwest Washington State. The economies of these rural communities is heavily dependent upon a healthy fishing industry. It is our history and it is who we are as a community. These were once thriving industries, providing robust economies that generation after generation of the local population accepted as a way of life. It is a hard life, but it was in their blood.

A "White Paper" produced by the Pacific County Economic Development Council last summer reported that, "The marine industries sector is an integral part of Pacific County's economic engine and community well-being. According to a recent Regional Industry Cluster Study completed for the Pacific Mountain Workforce Development Council, *marine industries account for more than 20 percent of the County's 5,885 jobs* and an estimated direct annual payroll in excess of \$41.2 million. The tax revenue from these sales helps to fund County services and the operation of special districts, such as libraries, ports, water and emergency medical services."

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major species groups important to the industry. Important species within the groundfish category include whiting, flatfish, rockfish, lingcod and sablefish. In 2006, non-tribal commercial fish landings from Washington fisheries totaled nearly 109.4 million pounds, generating \$65.1 million in ex-vessel value, which is the price received by commercial fishers for fish landed at the dock. Groundfish produced the greatest share of landings (about 54 percent). In terms of regional catch, the Coastal area is by far the largest contributor to commercial fish harvesting in Washington, accounting for 85 percent of total pounds landed and 63 percent of total ex-vessel value. Seafood processing also contributes significantly to the value of Washington's commercial fisheries. Including in-State processing, the wholesale value of fishery products caught in Washington waters was an estimated \$101 million in 2006. Groundfish accounted for about 61 percent of this value.

The aggregate number of vessels landing at U.S. West Coast ports has decreased almost 67 percent since 1981. There was a large drop in the count of vessels delivering in the adverse oceanic conditions years of 1984 and the early 1990s. There were strategic buyout programs for vessels participating in the salmon fisheries in the 1990s and groundfish fishery in 2003. Vessel counts continued to drop until the late 1990s and have remained somewhat stable since then.

This bill will help alleviate some of the overwhelming burdens that have been placed upon the shore-based groundfish fleet in the last few years. This is largely a question of fairness. Buy-back payments, observer costs, new vessel safety requirements and other government mandates have crippled the groundfish fleet, forcing a level of consolidation that has left Washington State with only five non-whiting trawl boats.

The existence of these fleets is critical to the coastal communities that rely on the fishermen for their raw material and the jobs that shore-based processing create. The coastal communities of Washington need all the help we can get. Our ports and communities have been disproportionately impacted by these Federal management programs, such as the buyback and the Trawl IFQ (Individual Fishing Quota) program. This program permanently removed 91 vessels and 239 fishing permits from the groundfish trawl fishery. We have reached a tipping point where, without some financial assistance from the Government, further decline in the fleet will result in further erosion of the coastal fishing infrastructure and corresponding losses of shore-side jobs and facilities. *The REFT Pacific Act is critically important and its passage will have an immediate positive economic effect on our fishing businesses and our rural Washington coastal communities, who rely on these fishermen.*

Dr. FLEMING. Thank you, sir.

And next, Mr. Lagon, you are recognized for 5 minutes.

STATEMENT OF MARK P. LAGON, CHAIR OF THE INTERNATIONAL RELATIONS AND SECURITY, MSFS PROGRAM, AND PROFESSOR, PRACTICE OF INTERNATIONAL AFFAIRS, GEORGETOWN UNIVERSITY

Dr. LAGON. Thank you, Mr. Chairman, Ranking Member Sablan, members of the committee.

Dr. FLEMING. I believe your mike is not on.

Dr. LAGON. Thank you.

Dr. FLEMING. There we go.

Dr. LAGON. Mr. Chairman, Ranking Member Sablan, members of the committee, it is a privilege to testify today on the intersection of human trafficking and illicit fishing.

My experience working on combating human trafficking includes as a Senate Foreign Relations Committee staffer helping finalize the Trafficking Victims Protection Act, as Ambassador-at-large to combat trafficking in persons as a Bush political appointee, and CEO of the leading anti-trafficking nonprofit.

And I am also a founding board member, uncompensated I should say, of the Global Business Coalition Against Human Trafficking that includes Coca-Cola, Delta, Ford, Hilton, and Microsoft

as members. And that coalition seeks to shut windows of vulnerability to human trafficking, tainting vital, legitimate business through means I am going to talk about here.

Increasingly evidence indicates that labor and even sexual exploitation are occurring at sea, and particularly on fishing vessels that exist largely unnoticed. In 2013, the Maritime Labor Convention came into force to protect the rights of seafarers on merchant vessels and passenger ships, but unfortunately, no comparable legal measures exist for workers' rights aboard fishing vessels worldwide.

Fishing vessels are generally exempt from the vessel safety standards and monitoring requirements of the International Maritime Organization. Fishing vessels of all sizes are regulated solely by the country from which the vessel is registered or the so-called flag State rather than the port States where they bring their cargo to shore and where they are more likely to get caught doing something illegal.

In my view, this amounts to a governance black hole, and I found, for instance, the advice of the Pew Charitable Trust a useful resource, to see the problems with this weak enforcement environment. That environment allows increasing demand for seafood and conditions alternatively creating opportunity for human traffickers to seize maximum gain with little risk.

A 2011 U.N. Office on Drugs and Crime report concluded perhaps the most disturbing finding of our study was the severity of abuse of fishers' traffic for the purpose of forced labor onboard fishing vessels. These practices can only be described as cruel, inhuman treatment in the extreme.

As an example, Thailand has a large fishing fleet, but it is chronically short on fishermen, short by up to 60,000 a year, and foreign labor makes up 40 percent of the men working at sea. Human traffickers travel inland to remote villages in Cambodia and Myanmar and recruit men, and they move them with the complicity of corrupt border police to be sold into bondage at sea.

I will give you an example. NPR had an exposé of a man named Vannak Prum. He looked for a short-term fishing job to pay for his pregnant wife's hospital bills, but was sold to a Thai fishing vessel subject to 20-hour work days in dangerous and unsanitary conditions and held without pay for 3 years at sea, and his account indicates that that vessel was involved in illegal fishing inside Indonesian waters.

In 2013, the Environmental Justice Foundation interviewed four Myanmar men rescued from Thai fishing vessels who reported beatings and seeing a fellow crew member tortured and executed for trying to escape, as well as the murder of five others.

The State Department's trafficking persons report documents numerous examples involving victims, including women and children traffic for prostitution from developing countries across the Pacific, Asia and Africa.

Within national fishing fleets, the U.S. fleet is, of course, generally considered highly compliant with domestic and international laws, but illegal fishing by foreign vessels poses problems for the United States, particularly along the United States and Mexico border. There has been a drastic increase in recent years in the

number of incursions of illegal Mexican fishing vessels into U.S. waters, vessels that are also used to smuggle drugs and humans from Northeast Mexico into Texas.

The Illegal, Unreported, and Unregulated Fishing Enforcement Act, H.R. 69, and the Pirate Fishing Elimination Act would markedly enhance the U.S. ability to combat IUU fishing. H.R. 69 would improve our domestic abilities related to tracking, apprehending, sanctioning foreign vessels and nations that engage in IUU fishing. It provides practical steps the United States can take unilaterally to discourage foreign illegal fishing.

While H.R. 69 focuses on refining existing law, the Pirate Fishing Elimination Act would implement a new fisheries agreement, the Port State Measures Agreement. The PSMA will strengthen port inspections, enhance communications, and deny port entry to suspected illegal fishing vessels. It will change the incentive structure to the bad guys, to human traffickers and other criminals who will not have the incentive to try and break the rules.

Both bills will increase the sense of other countries that they should live by international obligations based on the U.S. example. I strongly urge the U.S. House of Representatives to pass both of these bills which would regularize and shed sunshine on illegal fishing. They would not only prove more stewardly for maritime ecosystems, but more fair to businesses playing by the rules and helpful to prevent vulnerable people from being utterly dehumanized, violated and even killed in illicit fishing.

Thank you very much.

[The prepared statement of Dr. Lagon follows:]

PREPARED STATEMENT OF MARK P. LAGON, PROFESSOR IN THE PRACTICE OF INTERNATIONAL AFFAIRS, AND GLOBAL POLITICS AND SECURITY CHAIR, MASTER OF SCIENCE IN FOREIGN SERVICE PROGRAM, GEORGETOWN UNIVERSITY; ADJUNCT SENIOR FELLOW FOR HUMAN RIGHTS, COUNCIL ON FOREIGN RELATIONS

Chairman Fleming, Ranking Member Sablan, members of the committee, it is a privilege to testify today on the legislation before the committee and to share insights on the intersection of human trafficking and illegal fishing. My experience working on combating human trafficking spans a decade and a half, including serving the Senate Foreign Relations Committee as a staffer, assisting then Senator Sam Brownback and the late Senator Paul Wellstone in finalizing the Trafficking Victims Protection Act of 2000. I later had the privilege to serve as Ambassador at Large directing the Office to Monitor and Combat Trafficking in Persons that Act created at the State Department.

Thereafter, I became CEO of the leading U.S. anti-trafficking non-profit, Polaris Project, and in 2012 Founding Board Member (uncompensated, to be clear) of the Global Business Coalition Against Human Trafficking (gbcat.org), which includes Carlson, Coca Cola, Delta Airlines, Ford Motor Company, Hilton Hotels, Microsoft, and NXP Semiconductor among its members. This coalition of thought leaders promotes best practices to shut the windows of vulnerability to human trafficking tainting vital, legitimate business—through means like those I will recommend today.

My tenure from 2007 to 2009 as Ambassador at Large involved rebalancing the focus on human trafficking toward that based on exploitation for *labor*—in addition to that horrifically based on *commoditized sex*. Labor trafficking is a broader phenomenon, yet still prosecuted today globally less than one-sixth as often as sex trafficking, according to the 2013 Department of State *Trafficking in Persons Report*.¹ That tenure also witnessed the revelation of how often human trafficking occurs in the seafood sector—from the victims of forced labor in seafood processing I met in Thailand in 2007, to boys fishing in Ghana's Lake Volta so vividly depicted in the

¹U.S. Department of State. (2013). *Trafficking in Persons Report—June 2013*. See <http://www.state.gov/j/tip/rls/tiprpt/2013/>.

documentary film on child trafficking, *Not My Life*,² which we at the State Department Office lent advice to get made.

Today, this committee considers two bills that would combat illegal, unreported and unregulated (IUU) fishing: H.R. 69, The Illegal, Unreported and Unregulated Fishing Enforcement Act, introduced by Congresswoman Bordallo, and The Pirate Fishing Elimination Act, introduced by Committee Ranking Member DeFazio. My testimony will center on human trafficking as it relates to fishing vessels and illegal fishing worldwide.

It is important to state from the outset that there is limited information available on the relationship between illegal fishing, human trafficking, and other criminal activities. These activities can occur independently. Obviously only some fishing vessels are engaged in illegal fishing and human trafficking. However, the available data suggests that the confluence of these activities at sea does occur all too often, requiring a strong response from the United States. These illicit activities impact economically disadvantaged and vulnerable people, global commerce, and the health of our ocean environment, and merits your action. I strongly urge this committee to support and advance The Illegal, Unreported and Unregulated Fishing Enforcement Act (H.R. 69), and The Pirate Fishing Elimination Act as soon as possible.

Human trafficking is not limited to activities on land, and increasingly evidence indicates that labor and even sexual exploitation are occurring at sea, and particularly on fishing vessels that exist largely unnoticed by the rest of the world. In 2013, the Maritime Labor Convention (MLC) came into force to protect the rights of seafarers on merchant vessels and passenger ships, but unfortunately, no comparable legal measures exist for workers rights aboard fishing vessels worldwide. Further, fishing vessels are generally exempt from the vessel safety standards and monitoring requirements of the International Maritime Organization (IMO). As a result, a range of fishing vessels of all sizes and seaworthiness are regulated solely by the country from which the vessel is registered, the vessel's "flag" State, and they can operate across wide swaths of the ocean for months or years at a time with relative autonomy. Enforcement actions have traditionally been left to the States where the boats are registered, or "flagged," rather than the "port" States where they bring their cargo to shore, where they would be more likely to be caught doing something illegal.

Moreover, fishing boats are much less carefully regulated than other ships. Because fishing vessels are not required to have identification numbers, enormous ships are known to change names and flags of registration to stay a step ahead of authorities. Interpol issued two worldwide alerts last year for vessels that had done just that.³ Fishing vessels are not required to carry satellite transponders, which makes it easy for them to evade surveillance. This all amounts to a governance "black hole." Let me say that I have found the Pew Charitable Trusts, as a nonprofit with expertise on IUU, working to address international enforcement challenges, a particularly useful resource for policymaking.

This weak regulatory environment impacts a global fishing industry with annual revenues of \$80–85 billion that seeks to meet the increasing demand for seafood.⁴ These financial and regulatory conditions create an opportunity for traffickers to seize maximum gain with little risk, at the expense of fellow human beings who they in effect enslave. A 2011 report of the United Nations Office on Drugs and Crime (UNODC), *Transnational Organized Crime in the Fishing Industry*, concluded:

Perhaps the most disturbing finding of the study was the severity of the abuse of fishers trafficked for the purpose of forced labour on board fishing vessels. These practices can only be described as cruel and inhumane treatment in the extreme. . . . A particularly disturbing facet of this form of exploitation is the frequency of trafficking in children in the fishing industry.⁵

We lack robust statistics of the full extent of human trafficking abuses associated with the global fishing industry, but a growing list of examples highlights the severity of the problem. *Bloomberg Businessweek* conducted a 6-month investigation into debt bondage schemes in Indonesia where men, desperate for work, were exploited

² See <http://notmylife.org/fishing-boys-lake-volta>.

³ See <http://news.msn.co.nz/nationalnews/8767033/nz-goes-to-interpol-over-rogue-trawler>.

⁴ Dyck, A.J. and Sumaila, U.R. (2010). "Economic Impact of Ocean Fish Populations in the Global Fishery." *Journal of Bioeconomics*, DOI: 10.1007/s10818-010-9088-3.

⁵ United Nations Office on Drugs and Crime (UNODC). *Transnational Organized Crime in the Fishing Industry—Focus on: Trafficking in Persons, Smuggling of Migrants, and Illicit Drugs Trafficking*. (2011). See http://www.unodc.org/documents/human-trafficking/Issue_Paper-TOC_in_the_Fishing_Industry.pdf.

on Korean-flagged fishing vessels operating off the coast of New Zealand. Fishing company agents rushed men into signing misleading contracts that allowed the fishing company to withhold salaries, and they collected collateral assets from workers' families. Further, crewmembers were required to work to the company's loosely defined "satisfaction," or be sent home without pay and charged \$1,000 for airfare.⁶ Though the crew lived in cramped, unsanitary conditions with the daily threat of physical violence and rape, the contract terms assessed fines for any worker who ran away from the job. Workers were forced to work, knowing their families would ultimately be held responsible.

A 2011 report from the International Organization for Migration (IOM) entitled *Trafficking of Fishermen in Thailand* provides detailed information on the scale and scope of the human trafficking in the Thai fishing industry.⁷ Citizens of Southeast Asian countries are subjected to human trafficking on Thai vessels that fish on longer voyages in foreign waters far from enforcement (as compared to vessels that fish in their Exclusive Economic Zone, or EEZ, waters and return to port frequently). Workers are vulnerable due to their limited potential to leave the ship. In 2012, National Public Radio (NPR) produced a special report⁸ exposing significant human trafficking of men from Cambodia and Myanmar on Thai fishing vessels. Thailand has a large fishing fleet but is chronically short on fishermen—short by up to 60,000 per year—and foreign labor makes up 40 percent of the men working at sea. The report indicates that human traffickers travel inland to remote villages in Cambodia and Myanmar and recruit men who they move with the complicity of corrupt border police to be sold into bondage at sea.

The NPR story follows a man named Vannak Prum as he looked for a short-term fishing job to pay for his pregnant wife's hospital bills, but was sold to a Thai fishing vessel, subject to 20-hour work days in dangerous and unsanitary conditions, and held without pay for 3 years at sea. Prum's account documents illegal fishing inside of Indonesian waters and his vessel evading gunfire before slipping into Malaysian waters. Prum eventually escaped by jumping overboard while fishing near an island off Malaysia, but once ashore, he was sold into indentured servitude on a palm oil plantation by a local police officer. This case reflects archetypical human trafficking: vulnerable groups of people robbed of their autonomy because they lack any access to justice.

Fishermen trapped at sea are subjected to violent, and sometimes deadly, abuse while aboard Thai vessels. A 2009 survey by the United Nations Inter-Agency Project on Human Trafficking (UNIAP) found that 59 percent of interviewed migrants trafficked aboard Thai fishing boats reported witnessing the murder of a fellow worker.⁹ Accidents, dangerous working conditions and the fear of being physically abused are common, but reports suggest that most vessels had little to no medical supplies and would not stop work to seek medical attention for the crew.¹⁰ In 2013, the Environmental Justice Foundation (EJF) interviewed 14 Myanmar men rescued from Thai fishing vessels who reported beatings by the senior crew, and in two cases, the victims reported seeing a fellow crewmember tortured and executed for trying to escape, as well as the murder of five others.¹¹ Further, EJF interviews with rescued victims confirmed that the vessels often fished illegally in foreign waters.¹² In 2013, 150 Cambodian and Burmese victims were rescued from Thai fishing vessels in ports around the world, but the U.S. State Department reports that

⁶Skinner, E. Benjamin. (February 23, 2012). "The Fishing Industry's Cruellest Catch," *Bloomberg Businessweek*. See <http://www.businessweek.com/printer/articles/22538-the-fishing-industrys-cruellest-catch>.

⁷International Organization for Migration (IOM). (2011). *Trafficking of Fishermen in Thailand*. See <https://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/thailand/Trafficking-of-Fishermen-Thailand.pdf>.

⁸Service, Shannon, and Palmstrom, Becky. (June 19, 2012). "Confined to a Thai Fishing Boat, For Three Years." *NPR*. See <http://www.npr.org/2012/06/19/155045295/confined-to-a-thai-fishing-boat-forthree-years>.

⁹United Nations Inter-Agency Project on Human Trafficking (UNIAP). (2009). "Exploitation of Cambodian Men at Sea." See http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf.

¹⁰International Organization for Migration (IOM). (2011). "Trafficking of Fishermen in Thailand." See <https://www.iom.int/jahia/webdav/shared/shared/mainsite/activities/countries/docs/thailand/Trafficking-of-Fishermen-Thailand.pdf>.

¹¹Environmental Justice Foundation. (2013). "Sold to the Sea—Human Trafficking in Thailand's Fishing Industry." See http://ejfoundation.org/sites/default/files/public/Sold_to_the_Sea_report_lo-res-v2.pdf.

¹²*Ibid.*

this is likely only a fraction of the total number of Asian men victimized by trafficking on fishing boats.¹³

The State Department's *Trafficking in Persons Report* for 2013 suggests that the connection between human trafficking and the fishing industry is not limited to Thailand, and there are numerous examples involving victims—including women and children trafficked for prostitution—from poor and developing countries across the Pacific, Asia, and Africa.¹⁴ In July 2013, a humanitarian organization reported that a foreign fishing firm based in Sierra Leone trafficked girls for purposes of sex, leaving port with the girls onboard before they were rescued by the local authorities.¹⁵ Many other women and children are not as fortunate.

The same circumstances that make fishing vessels opportune for human trafficking also make them susceptible to other forms of transnational organized crime, including drug trafficking. For instance, a State Department report notes that drug smuggling is often aided by fishing boats moving drugs through the Bahamas, Jamaica and Florida.¹⁶ The 2011 UNODC report *Transnational Organized Crime in the Fishing Industry* that I previously mentioned addressed the extent to which criminal activities within the fishing industry were a threat to the law-abiding and legitimate fishing industry, local fishing communities, and the public at large. The study confirmed labor abuses aboard fishing vessels, as well as the links between illegal fishing, and transnational organized crime, and drug trafficking. Specifically, it found that fishing vessels are used for smuggling migrants, drugs (primarily cocaine), and weapons, and committing acts of terrorism. Fishing vessels are used as “mother ships” serving as base stations from which criminal activities are coordinated, as supply vessels for other vessels engaged in criminal activities, or simply as cover for clandestine activities at sea and in port. The study also found that some transnational fishing operators are engaged in marine living resource crime. These fishing operations are highly sophisticated and employ complex incorporation and vessel registration strategies to avoid tracking. They coordinate at-sea vessel support services to aid in moving illegally caught fish to market, often supported by fraudulent catch documentation.¹⁷

As stated at the outset, the data that explicitly connects illegal fishing, human trafficking, and other criminal activities is limited, but mounting evidence suggests that fishing vessels engaged in one of these illicit activities are likely to also engage in the others. There is evidence of widespread IUU fishing occurring in the Asia-Pacific region, estimated at 3.4–8.1 million tons per year,¹⁸ costing countries in that region significant annual revenue losses (losses estimated, for instance, at \$2.5 billion in 2007¹⁹) and resulting in overexploited fisheries. The presence of IUU activity overlaps with human trafficking abuses aboard fishing vessels and *also* within communities that service the fishing vessels in port. The coincidence of these activities indicates that these problems are related, and are being driven by the global demand for fish and fish products.

There is a significant variation of compliance and enforcement, as with many issues, within national fishing fleets, with the U.S. fleet generally considered highly compliant with domestic and international laws, while others, such as Thailand have a poor record, implicated in cases of illegal fishing, human trafficking abuses, and human smuggling. Despite the high compliance rates within the U.S. fleet, illegal fishing by foreign vessels poses problems for the United States, particularly in Alaska and along the U.S.-Mexico border. In Alaska, U.S. crab fishermen have been undercut by illegal Russian crab fishing operations, impacting global supply and prices, and costing the U.S. economy hundreds of millions of dollars. In the Gulf of Mexico, there has been a drastic increase in recent years in the number of incursions of illegal Mexican fishing vessels called “lanchas” into U.S. waters. Local U.S.

¹³ U.S. Department of State. (2013). *Trafficking in Persons Report—June 2013*. See <http://www.state.gov/j/tip/rls/tiprpt/2013/>.

¹⁴ *Ibid.*

¹⁵ Voice of America. (July 19, 2013). “Sierra Leone: Government Targets Human Trafficking.” *Voice of America*. See <http://allafrica.com/stories/201307200024.html>.

¹⁶ U.S. Department of State. (2012). *International Narcotics Control Strategy Report* (INCSR). See <http://www.state.gov/j/inl/rls/nrcrpt/2012/vol1/184098.htm>.

¹⁷ United Nations Office on Drugs and Crime (UNODC). (2011). *Transnational Organized Crime in the Fishing Industry—Focus on: Trafficking in Persons, Smuggling of Migrants, and Illicit Drugs Trafficking*. See http://www.unodc.org/documents/human-trafficking/Issue_Paper-TOC_in_the_Fishing_Industry.pdf.

¹⁸ Asian-Pacific Economic Cooperation Fisheries Working Group. (2008). “Assessment of Impacts of Illegal, Unreported and Unregulated (IUU) Fishing in the Asia-Pacific,” *APEC Singapore*. See http://www.imcsnet.org/imcs/docs/apec_2008_iuu_fishing_assessmt_se_asia.pdf.

¹⁹ United Nations Food and Agriculture Organization (FAO). (2007) “Fishing Capacity Management and IUU Fishing in Asia.” Bangkok.

Coast Guard officials describe these illegal Mexican fishing vessels as a “persistent challenge to U.S. sovereignty,”²⁰ and recent reports suggest that these same vessels are also used to smuggle drugs and humans from northeast Mexico into Texas.²¹ Small boats that would typically be used for fishing are a common mode of transport for undocumented migrants attempting to enter the United States, using California beaches as a landing point. Smugglers are paid up to \$9,000 per person for these dangerous voyages that often end in deaths.²²

Human trafficking in particular is a complex, international problem that must be addressed through a variety of legal and diplomatic channels. To that end, The Illegal, Unreported and Unregulated Fishing Enforcement Act (H.R. 69), and The Pirate Fishing Elimination Act would enhance the ability of the United States to combat IUU fishing by strengthening and streamlining U.S. enforcement within existing fisheries statutes, and through the implementation of a new international agreement to fight IUU fishing, the Port State Measures Agreement.

H.R. 69 takes a number of common-sense steps to improve our domestic capabilities related to tracking, apprehending and sanctioning foreign vessels (and nations) that engage in IUU fishing. Specifically, H.R. 69 would make the prohibitions, penalties, and enforcement protocols for nine international fisheries statutes consistent with each other and with our domestic fisheries law, the Magnuson-Stevens Fishery Conservation and Management Act. The result would be to streamline enforcement by the relevant Federal and State enforcement agents. In addition, the legislation facilitates efficiencies including interagency collaboration, data exchange, and the creation of an IUU vessel list to allow faster, more coordinated monitoring and enforcement actions against foreign vessels, and nations, suspected of illegal fishing. Finally, H.R. 69 makes technical amendments to the High Seas Driftnet Fishing Moratorium Protection Act, to allow the United States to more effectively identify nations that are non-compliant with their international obligations under the various Regional Fisheries Management Organizations. The concepts in H.R. 69 are practical steps that the United States can take unilaterally to discourage foreign illegal fishing, facilitate information exchange between Federal Government entities, and propel other nations’ compliance.

While H.R. 69 focuses primarily on refining existing law, The Pirate Fishing Elimination Act, would implement a new international fisheries agreement—the Port State Measures Agreement (PSMA)—that was created to combat illegal fishing worldwide. I testified this past February before the Senate Foreign Relations Committee in support of the PSMA, and am glad that committee subsequently voted unanimously in favor of its ratification. Once entered into force, the PSMA will strengthen port inspections, enhance communications, and deny port entry—including port services and supplies—to suspected illegal fishing vessels. The PSMA is a cost-effective enforcement mechanism that will begin to change the economic incentives—increasing the cost associated with illegal fishing because it will be more difficult for illegal vessels to access global markets. Once a suspected illegal fishing vessel is identified, countries will coordinate enforcement efforts to ensure that the suspected vessel is refused entry at other ports until the vessel agrees to be inspected or is prosecuted. The Pirate Fishing Elimination Act puts these concepts into statute by establishing the responsibilities of the Secretary of Commerce and the U.S. Coast Guard, inspection and enforcement protocols, and steps to refuse entry or deny port services to vessels suspected of IUU fishing. The provisions in this legislation are rightly considered to be non-controversial and the companion legislation, S. 267, passed the Senate Commerce Committee unanimously in July 2013.

Together, these two bills make important improvements to our domestic enforcement capabilities against foreign illegal fishing operations, while also creating a strong incentive to foreign vessels and nations to comply with international obligations. The increased accountability and economic incentives in these bills could help to erode other criminal activities that are often associated with illegal fishing, including human trafficking.

In 2000, Congress enacted the Trafficking Victims Protection Act which defined trafficking for the purposes of labor or sex and provided critical measures to protect human trafficking victims. This law was reauthorized for the fourth time in March

²⁰Mendoza, Jesse. (September 6, 2013). “U.S. Coast Guard Seizes 1,000 Pounds of Illegally Caught Fish.” *Valley Morning Star*. See http://www.valleymorningstar.com/news/local_news/article_a1a39b6a-1772-11e3-a961-001a4bcf6878.html.

²¹Tompkins, Shannon. (June 11, 2013). “Gulf Poachers Threaten to deplete Fisheries.” *Houston Chronicle*. See <http://www.houstonchronicle.com/sports/outdoors/article/Gulf-poachers-threaten-to-deplete-fisheries-4589290.php>.

²²Carcamo, Cindy. (September 14, 2012). “For Illegal Immigrants, Ocean is the New Desert.” *Orange County Register*. See <http://www.ocregister.com/articles/san-371399-people-smuggling.html>.

2013 with bipartisan support. The Illegal, Unreported and Unregulated Fishing Enforcement Act (H.R. 69), and The Pirate Fishing Elimination Act would complement this widely supported law, institute standards that are consistent with existing U.S. practice, and could pay big dividends globally through enhanced accountability, monitoring, communication, and enforcement of suspect fishing vessels that may be engaged in human trafficking or other criminal activities. These two bills, combined with ratification and the entry into force of the Port States Measures Agreement, provide a pathway to beginning to address the complicated problem of human trafficking on the high seas. I strongly urge the U.S. House of Representatives to offer its leadership and quickly pass these two bills, sending a message to the world that we will not tolerate illegal fishing and its associated human rights violations.

In conclusion, a 2009 peer-reviewed scientific study estimated that the worldwide annual value of losses from illegal and unreported fishing could reach \$23.5 billion.²³ Yet, vessels engaged in illegal, unregulated fishing not only steal precious food resources off the coasts of poor countries and damage marine ecosystems. They engage in drug smuggling. Most serious, they also prey on human beings. Illicit fishing worldwide appears to be rife with human trafficking. The legislation under consideration at this hearing would regularize and shed sunshine on that fishing. As a result they would not only prove more stewardly for *marine ecosystems*, and more fair to *businesses* playing by the rules, but helpful to prevent vulnerable *people* from being utterly dehumanized, violated, and even killed in that illicit fishing.

Thank you for inviting me to testify.

Dr. FLEMING. Thank you. Thank you, Ambassador Lagon, and thank you for your testimony.

Mr. Kraft, you are now recognized, sir, for 5 minutes.

**STATEMENT OF MIKE KRAFT, VICE PRESIDENT, CORPORATE
SOCIAL RESPONSIBILITY, BUMBLE BEE FOODS**

Mr. KRAFT. Good afternoon, Mr. Chairman, and thank you for the invitation to testify today.

I am Mike Kraft. I am with Bumble Bee Foods, and I would like to present our company's views on H.R. 69, the IUU Fisheries Enforcement Act, as well as the H.R. draft bill that would implement the Port State Measures Agreement.

Very briefly, Bumble Bee Foods is a privately held company headquartered in San Diego. We are North America's largest branded shelf-stable seafood company, and we offer canned and pouched products for sale in the United States and Canada.

As a seafood company that relies upon our oceans for supply of natural resources critical to our business, it is inherent to our mission that we support practices and policies that ensure long-term sustainability of our fisheries' resources.

At Bumble Bee we have an active sustainability program participating in a number of U.S. and international fisheries management organizations. We also were a founder of the International Seafood Sustainability Foundation, which is a partnership between scientists, the World Wildlife Fund and global tuna processors.

Bumble Bee is also a founding member and supporter of the Congressional Oceans Caucus Foundation.

I will not reiterate the number of points we have heard on the figures of IUU fishing. It is safe to say that we also view it as an economic and environmental risk that needs to be continually addressed.

²³ Agnew, David J., *et al.* (February 25, 2009), "Estimating the Worldwide Extent of Illegal Fishing," *PLOS ONE*. See www.plosone.org/article/info:doi/10.1371/journal.pone.0004570.

Now, the United States has been a global leader in effectively fighting IUU fishing. Domestically we have some of the strongest laws aimed at curtailing IUU fishing as well as ensuring IUU fish does not enter our markets. The U.S. Coast Guard, NMFS and NOAA do an excellent job in enforcing our domestic laws.

Also, internationally the United States has taken a leadership role at various RFMOs pushing for stronger measures to detect and deter IUU fishing. Unfortunately, as is the case with international fisheries organizations which rely on the members for the enforcement, the application and enforcement of the measures remain mixed at best.

H.R. 69 is a bipartisan bill that amends various existing international fishery statutes to simplify, streamline and strengthen existing enforcement protocols. The overall goal of the bill is to improve the capabilities of U.S. law enforcement to detect, track and prosecute foreign IUU fishing activity.

Today we enforce international fishery agreements to which we are a party under 11 or more separate fishery statutes. These laws were developed over a period of time, took divergent approaches in establishing enforcement protocols and penalties and are not always consistent with Magnuson-Stevens. As a result, the U.S. fisheries enforcement efforts are carried out under a patchwork of different standards and authorities. H.R. 69 will harmonize and strengthen the enforcement authorities.

Title 2 of H.R. 69 amends the Tuna Conventions Act of 1950 to implement the Antigua Convention. As we have heard, the convention was entered into force in 2010, but the United States must still conform its domestic statutes before we can deposit the instrument of ratification and accede to the convention.

The provisions in H.R. 69 accomplish this and the U.S. tuna industry strongly supports the convention.

The Port State Measures Agreement adopted by the UNFAO in 2009 establishes the first global agreement focused on IUU fishing. The United States was one of the principal architects of the agreement, which is modeled after our own domestic IUU fishing laws. Port State measures is built on the simple premise that IUU fishing can be reduced and possibly eliminated if IUU fish can be prevented from entering global commerce.

The most effective way of accomplishing this is to make it extremely difficult for IUU fish to be offloaded in port. The Port State Measures Agreement establishes the first global standards to control port access from foreign fishing vessels that engage in IUU.

A critical component of the port State measures is that it creates an obligation of the signatory nations to apply and implement these measures so that these measures to combat IUU become more than just aspirational. The sad truth is that in many other coastal nations, they are just simply not as rigorous in enforcing the rules as we are in the United States.

The draft bill includes many of the revisions to the U.S. law necessary to implement the port State measures. We do have some concerns regarding the proposed enforcement and penalty regime and would like to work with the committee to ensure that the bill is consistent with the Magnuson-Stevens Act.

The Senate companion bill, S. 267 has already been approved unanimously by the Senate Committee on Commerce, Science and Transportation, and now are awaiting Floor actions.

In closing, IUU is a multi-billion dollar industry that threatens the health and sustainability of our global fisheries resources. Bumble Bee encourages this committee to approve these two pieces of legislation designed to prevent, deter and eliminate IUU.

Thank you.

[The prepared statement of Mr. Kraft follows:]

PREPARED STATEMENT OF MICHAEL KRAFT, VICE PRESIDENT OF SUSTAINABILITY,
BUMBLE BEE FOODS, LLC

Thank you for the courtesy of your invitation to testify. I am Michael Kraft, Vice President of Sustainability for Bumble Bee Foods, LLC. Today, I will present our company's views on the need for this committee to approve H.R. _____, a bill to prevent, deter, and eliminate illegal, unreported, and unregulated fishing through the Port State Measures Agreement (PSMA); and H.R. 69, the Illegal, Unreported and Unregulated Fishing Enforcement Act of 2013. H.R. 69 also contains provisions implementing the Antigua Convention which is of particular importance to the U.S. tuna industry.

Bumble Bee Foods, LLC was founded in 1899 by a handful of dedicated fishermen. Today, privately held and headquartered in San Diego, Bumble Bee Foods is North America's largest branded shelf-stable seafood company, offering a full line of canned and pouched tuna, salmon, sardines, and specialty seafood products marketed in the United States under leading brands including Bumble Bee®, Brunswick®, Sweet Sue®, Snow's®, Beach Cliff®, Wild Selections®, Bumble Bee SuperFresh®, and in Canada under the Clover Leaf® brand.

The healthy profile of Bumble Bee's product portfolio affords us a strong basis from which to support and encourage healthy consumer lifestyles. The health benefits of seafood are widely known and, at a time when the USDA is urging Americans to include more seafood in their diets, we are proud to offer millions of Americans healthy, nutritious sources of lean protein at an affordable price, while also encouraging them to take simple steps to live a healthier lifestyle through such programs as our signature Bee Well for Life™ program, designed to encourage a more holistic approach to active living and good nutrition, and through our participation as a founding member of the Healthy Weight Commitment Foundation—a first-of-kind initiative in the United States involving a coalition of over 140 retailers, non-profit organizations, and food and beverage manufacturers aimed at reducing obesity, particularly among children, by encouraging behavior change and providing consumer tools in the marketplace, at work and in schools.

Sustainability

As a seafood company that relies upon our oceans for a supply of natural resources critical to our business, it is imperative, and in fact inherent to our mission, that we adhere to practices and policies that ensure long-term sustainability of our fisheries resources that enable us to provide an affordable, nutritious lean source of protein for people today and help feed a future population expected to grow to 9 billion by 2050.

No single aspect is more important, or more central, to Bumble Bee's sustainability program than ensuring the responsible harvesting and management of fisheries from which we source—this is not only important to the environment and our consumers, but for our business as well. Our corporate sustainability platform, adopted in 2005, has become a key focal point driving internal behavior and how we conduct business across the globe.

Science is at the core of our approach to fisheries management; independent, science-based stock assessments are a key component in ensuring the sourcing of sustainable seafood. We have engaged third party experts to assess our various fisheries to determine if they are being managed in a sustainable manner. Our assessments are based on the scientific stock assessments completed by various national and international research bodies. In addition to our internal efforts, Bumble Bee actively participates in a broad range of fishery management organizations. These organizations include the four Regional Fishing Management Organizations (RFMOs) for tuna, the New England and Mid-Atlantic Fishery Management Councils, the National Fisheries Institute, and the Fishery Council of Canada. Bumble

Bee is also a Food Marketing Institute Sustainable Seafood Working Group supplier advisor.

In 2009, Bumble Bee became a proud founder of the International Seafood Sustainability Foundation (ISSF). ISSF is a global partnership among scientists, the World Wildlife Fund (WWF), and tuna processors who represent more than 75 percent of the world's shelf stable tuna production. This unique combination of industry, science, and environmental community is committed to driving positive change in tuna fisheries through direct action of its participants.

The ISSF mission includes undertaking science-based initiatives for the long-term sustainability of tuna stocks, reducing by-catch and promoting ecosystem health. The strategy and focus of ISSF addresses the major sustainability challenges facing the global fishery through applied science, advocacy and direct action. Since its 2009 inception, ISSF and its participants have committed to a number of actions aimed at ensuring long-term sustainability of tuna including: agreement to traceability standards from capture to plate; not sourcing tuna caught with large scale drift nets or from IUU fishing; sourcing from boats with unique vessel identifiers; funding and supporting a multitude of sea turtle conservation projects; funding at-sea research programs to mitigate by-catch in purse seine fishing.

Last, Bumble Bee became a founding member and supporter of the Congressional Oceans Caucus Foundation. Our purpose in joining was to help ensure that responsible oceans conservation and fisheries sustainability legislation was enacted by the U.S. Congress on issues that should enjoy bipartisan support.

IUU Threat to Sustainability

IUU fishing is the greatest single threat to both our industry's and our Nation's efforts to promote sustainable harvest of the world's marine resources. Make no mistake about it, IUU fishing is a multi-billion dollar industry fueled by the overall increase in fish prices and dwindling global fish stocks. The exact extent of IUU fishing remains unknown, but it has been estimated in recent years that worldwide IUU fish harvests are worth between \$10 billion and \$23.5 billion annually, and represents between 11 million and 26 million tons.¹ It's worth noting that the upper limit of 26 million tons of IUU fish is six times more fish than the entire annual catch of the U.S. commercial fishing industry. Some of the biggest culprits involve fishing vessels flagged from Asian and developing nations including Korea, Taiwan, China and Belize.

So what exactly is "IUU fishing"? The term describes a range of fishing activities, including the failure to report or the misreporting of catches; fishing without the permission of a coastal nation; the reflagging of vessels to countries that are unable or unwilling to adequately control their fishing activity; and noncompliance with fishing gear and fishing area rules. Worldwide, the amount of IUU fishing has been increasing as fishermen attempt to avoid stricter fishing rules created to address declining fish stocks. Preventing IUU fishing on the high seas is extremely difficult due to the vast areas of ocean to monitor, enforcement resource limitations, and a high volume of operating fishing vessels.

The United States has long been a global leader in effectively fighting IUU fishing. Domestically, we have some of the strongest laws aimed at curtailing IUU fishing and ensuring IUU fish do not enter our markets. Under the High Seas Driftnet Fishing Moratorium Protection Act, as amended, the United States lists nations identified as having vessels engaged in IUU fishing and can both deny port privileges to IUU vessels and prohibit the import of fish products from IUU nations. Additionally, the Magnuson-Stevens Act includes some of the strictest enforcement measures and penalties to deter U.S. fishermen from engaging in IUU fishing.

At this point I would like to commend the U.S. Coast Guard, the National Marine Fisheries Service and their parent agency NOAA for doing an excellent job in enforcing our domestic laws. Through their diligence, they have ensured IUU fishing is not an issue within the United States and have done the best they can with the tools they have to prevent IUU fish from coming into our markets.

Internationally, the United States has also taken a leadership role. Through the various RFMOs, the United States has pushed for stronger measures to detect and deter IUU fishing, including adoption of IUU vessel lists, market-related measures, vessel monitoring and surveillance programs and prohibiting the transfer of catch at sea. Unfortunately, as is the case with most international fishery organizations—which rely on the member nations to enforce the rules on their own fishermen—application and enforcement of these measures remains mixed at best.

¹David J. Agnew, et al., Estimating Worldwide Extent of Illegal Fishing, PLoS ONE, Feb. 2009 at 4.

H.R. 69—Title I: IUU Fishing Enforcement Act of 2013

H.R. 69 is a bipartisan bill that amends various existing international fisheries statutes to simplify, streamline and strengthen existing enforcement protocols. The overall goal of the bill is to improve the capabilities of U.S. law enforcement to detect, track and prosecute foreign IUU fishing activity.

Today, the United States enforces international fishery agreements to which we are a party under 11 or more separate fisheries statutes. These laws were developed over time and took divergent approaches in establishing enforcement protocols and penalties. Additionally, these statutes are not always consistent with the Magnuson-Stevens Act, the centerpiece of our Nation's fishery conservation and management laws. As a result, U.S. international fisheries enforcement efforts are carried out under a patchwork of different standards and authorities. H.R. 69 will harmonize and strengthen U.S. fisheries enforcement authorities and capabilities across various fisheries statutes in order to better combat and deter foreign IUU fishing activities. Doing this will also likely increase the ease and improve the efficiency with which the Coast Guard executes its' at-sea fisheries enforcement activities. This is a particularly important aspect considering the Coast Guard's difficult budget situation and the many missions to which they are tasked.

The Senate Committee on Commerce, Science, and Transportation has already approved S. 269, the companion bill to H.R. 69. Our company actively participated in suggesting some practical changes to that bill to avoid potential budget scoring issues and to ensure that penalties were consistent with the Magnuson-Stevens Act.

We encourage this committee to work closely with the Senate committee to develop a text that can pass both chambers and be signed into law. For the many reasons mentioned above, it's imperative that this legislation be enacted this year!

Title II: Implementation of the Antigua Convention

Title II of H.R. 69 amends the Tuna Conventions Act of 1950 to implement the Antigua Convention. The Antigua Convention strengthens and replaces the 1949 Convention establishing the first ever RFMO, the Inter-American Tropical Tuna Commission (IATTC). The IATTC has competence over highly migratory species of tuna and tuna-like species in the Eastern Tropical Pacific Ocean. The United States and the U.S. tuna industry have long been a leader in the IATTC. The United States signed the Antigua Convention in November 2003 and the Senate gave its advice and consent to enter into the Convention in 2005. Although the Convention entered into force in 2010, the United States must still conform its domestic statutes before we can deposit the instrument of ratification and accede to the Convention. The provisions in H.R. 69 do this; they make the necessary changes to our domestic laws that will allow the United States to finally accede to this important fishery conservation Convention. The entire U.S. tuna industry strongly supports the Convention, and we encourage the committee to approve this legislation expeditiously.

H.R. ____ : A Bill to Implement the Port State Measures Agreement to Prevent, Deter and Eliminate IUU Fishing

The Port State Measures Agreement (PSMA), adopted by the United Nations Food and Agriculture Organization in November 2009, establishes the first global agreement focused on IUU fishing. The United States was one of the principal architects of the Agreement which is modeled after our own domestic IUU fishing laws. The PSMA is built on the simple premise that IUU fishing can be reduced and possibly eliminated if IUU fish can be prevented from entering global commerce, and the most effective way of accomplishing this is to make it extremely difficult for IUU fish to be offloaded in a port. In this regard, the PSMA establishes the first global standards to control port access from foreign fishing vessels that illegally engage in IUU fishing. These standards include mandating parties (port States) to require prior notice of a foreign fishing vessel's arrival in their port, restricting port entry and port services to foreign vessels known or suspected of IUU fishing, adopting minimum dockside inspection and training standards, and the sharing of information about IUU vessels with the appropriate RFMOs. Perhaps what is most critical about the PSMA is that it creates an obligation of the signatory nations to apply and implement these measures; in other words, these anti-IUU measures are to be enforceable, not merely aspirational. The sad truth is many coastal nations are simply not as rigorous in enforcing the rules as the United States.

H.R. ____ includes the necessary revisions to U.S. law to implement the PSMA. The Senate companion bill S. 267 has already been approved unanimously by the Senate Committee on Commerce, Science and Transportation and is now awaiting Floor action. Because the PSMA is viewed as a fisheries treaty, it requires Senate Advice and Consent. Encouragingly, on March 11, 2014 the Senate Committee on

Foreign Relations passed a favorable resolution of Advice and Consent to the ratification of the Agreement by the President. We've been advised that full Senate will soon consider the Agreement and that a favorable outcome is expected.

As mentioned earlier, IUU fishing is a multi-billion dollar industry that threatens the health and sustainability of our global fishery resources. Unfortunately, the IUU epidemic is spreading and action must be taken now before it's too late. Bumble Bee encourages this committee to quickly approve these two critical pieces of legislation, designed to prevent, deter and eliminate IUU fishing.

Dr. FLEMING. Thank you, Mr. Kraft.

Mr. Walsh, you are now recognized, sir, for 5 minutes.

**STATEMENT OF JAMES P. "BUD" WALSH, DAVIS WRIGHT
TREMAINE, LLP**

Mr. WALSH. Thank you, Mr. Chairman.

My name is James Walsh, better known as "Bud." I am a partner in the law firm of Davis Wright Tremaine, and I am a trial lawyer. I am a reformed Senate staffer. I came to Capitol Hill to work for Senator Warren Magnuson and, in fact, am reputed to have drafted the Magnuson Act, although the House members certainly do not agree with that.

Recently my practice has involved the working end of this legislation, of this kind of legislation. I defend companies, and I am not here to speak on behalf of any client, but I have defended companies here in the United States charged with civil penalty violations, with criminal violations, and I have represented American companies in foreign countries.

I have experience, and it was not a good one, in Russia, and so I am here to say that I think this legislation clearly is needed because the problem of IUU fishing is far greater than I think has even been stated here today because we are really at the limit of what we can take naturally out of the ocean, about 80 to 90 million metric tons.

We are not going to get more than that, and of course, that is only the fish that have been accurately reported. My concern is that while we have tried to lead the world in making sustainability work, and I do not care what anybody tells you, it is working here very well and it has taken 40 years to get it going properly. Not everybody else does that, and there is an alignment between IUU fishing and bad government around the world.

Somebody asked the question of where. West Africa, East Africa, Somalia, they really were fishermen before they were pirates, which brings me to the point about the name of the bill. Piracy is a universal crime. It is the equivalent of terrorism. Anybody can enforce it. You do not need a port State measure. You just need a pirate.

And most fishery violations under customary international law are considered civil violations. They are not to be treated criminally, and we happen to be one of the reasons that that is in the U.N. law, the sea treaty and customary international law because for many years our vessels were routinely seized and charged criminally in situations where it was not pirate fishing. It was simply a disagreement over jurisdiction, and it was a civil violation.

In addition, we are supposed to let any vessel leave port with its crew when a bond is placed, and the sad thing is even in some of the countries that we currently operate, they do not follow the same civil rules. They do not have the same constitutional protections of due process and of excessive penalties. It is no question that the provisions in both of these bills with regard to what powers are given to the government, nobody in the fishing industry is going to object to it because we already have it. It is already there, observers on every boat in many situations.

We file reports every day. Everything that we do is looked at closely, but not everybody is, and the danger is that if one of my clients happens to go into a port State that does not follow the rules and is more interested in acquiring a big fine as opposed to really prosecuting a clear violation in order to get income, I am going to be concerned and we all should be concerned because we do follow the rules.

And when people follow the rules, they should not be subjected to the kind of procedures you see in Russia where you can be held for 3 years without being charged with a crime. People do not follow the rules. So if you are going to have an IUU fishing bill, you should have a clear statement that people who engage in IUU enforcement in port States against your vessels or anybody else's will follow the highest standards of due process and the principles of international law intended to prevent wrongful deprivation of life, liberty and property.

Thank you.

[The prepared statement of M. Walsh follows:]

PREPARED STATEMENT OF JAMES P. WALSH, PARTNER, DAVIS WRIGHT TREMAINE LLP

Thank you for the invitation to testify today on a subject of growing importance—international enforcement of regional agreements to conserve and manage the world's fishery resources, including those found outside the 200-mile jurisdiction of coastal nations and on the high seas. Since enactment of the Magnuson-Stevens Act in 1976, world trade value in fish products has increased from \$8 billion per year to \$102 billion in 2011. Despite the fact that overall world marine fish harvests have now leveled off at around 80 million tons per year,¹ competition for those limited resources is increasing as the world population continues to grow and the health benefits of fish consumption are more generally known.

The United States has long pioneered creation of international organizations to deal collectively with the scientific management of international fisheries resources, which are now referred to as Regional Fisheries Management Organizations (RFMOs). For example, United States leadership led to the creation of the Inter-American Tropical Tuna Commission (IATTC) in 1949, one of the most successful RFMOs. The Senate is now considering ratification of four international agreements to broaden the coverage of RFMOs and strengthen enforcement of RFMO conservation measures, including the Port State Treaty. Reaffirming the importance of worldwide enforcement of RFMO conservation and management measures is consistent with our Nation's leadership in achieving science-based management, fishery sustainability and fair trade.² But we must also be wary of unintended consequences of well-meaning measures.

¹ 2012 U.N. World Fisheries Report, U.N. Food and Agriculture Organization, Rome, Italy. The vast majority of this fish is used for human consumption. Per capita consumption of fish is increasing most in developing regions and in low-income food-deficit countries, although consumption in developed countries is greater. Most of the fish consumed in developed countries (such as the United States), however, consists of imports, in particular from developing countries. Fish is one of the largest food product categories traded globally today.

² Agnew, et al., "Estimating the Worldwide Extent of Illegal Fishing," PLoS ONE, Vol. 4, Issue 2 (February 2009). Agnew estimated total losses due to IUU fishing at between \$10–24 billion annually.

I am a partner in the law firm of Davis Wright Tremaine LLP and my practice focuses on advice, counseling, and litigation for commercial harvest and processing companies based in the United States with operations in the United States and other countries and on the high seas. However, I appear here today on my own behalf and not on behalf of the firm or any of its clients. I have been practicing law since 1970, with extensive recent experience in fisheries enforcement matters in contested proceedings. From 1972 to 1981, I was engaged in public service, as Staff Counsel and later General Counsel of the U.S. Senate Committee on Commerce (Senator Warren Magnuson, Chairman) and then as Deputy Administrator of the National Oceanic and Atmospheric Administration (NOAA) under President Jimmy Carter.

In summary, I believe that S. 69 should be enacted after modifications as suggested below are made to insure consistency, symmetry, and fair process. I do not see the need to enact the bill to implement the Port State Treaty, which has yet to be introduced. The United States already has sufficient legal authority with its existing pattern of fishery enforcement statutes to meet, and even exceed, its obligations under that Treaty. And the Port State Measures would not only be redundant and confusing, because of its broad breadth, but would have the effect of overriding some of the provisions in S. 69. If there is a gap to be filled in our current pattern of enforcement authorities to satisfy our obligations under the Treaty, it should be identified and filled with the necessary well-framed additional authority,

Overview Comments

While I urge support for the basic concepts set forth in H.R. 69, improvements in its text before final enactment would help avoid unintended consequences and possible conflicts in real-life implementation of the concepts contained in any new law. In addition, we must all recognize certain realities of the global problem of what is called Illegal, Unregulated and Unreported (IUU) fishing activities. The greatest problems in IUU fishing are beyond the reach of the United States, particularly if we go it alone. It is estimated that, off Africa, illegal fishing may be 40 percent higher than reported catches. It has gotten so bad that the International Tribunal for Law of the Sea is considering a request for an advisory opinion on whether a flag nation should be held financially liable for IUU fishing by its vessels in exclusive economic zones off West Africa.

Moreover, we must remember that we have American fishing fleets that are subject to enforcement by other countries which may not always pursue enforcement in a manner consistent with what we consider due process.

It would also be a mistake to carry out a national program against IUU fishing that focuses on the trivial and not on the most significant unacceptable practices. For example, in NOAA's January 2013 Report to Congress on *Improving International Fisheries Management*, the agency identified Colombia as an "IUU Fishing Nation" on the basis of shark finning cases (illegal under Colombian law) for three Colombian vessels and three cases of discarding salt bags or trash at sea, each occurring in 2011 or 2012.³ NOAA said that "Colombia had not yet resolved these cases" so it was being identified, based on NOAA's very broad characterization of IUU fishing. Suffice it to say, NOAA does not resolve its own civil penalty cases in such a short period of time and it would be difficult for those not involved in such cases to determine their status.⁴

One of the biggest problems with IUU fishing is simply defining what it is and what should be actionable by enforcement authorities. Some RFMOs have adopted resolutions to be more precise about vessels to be listed as IUU. See IATTC Resolution C-05-07, Resolution to Establish a List of Vessels Presumed to Have Carried Out IUU Fishing Activities in the Eastern Pacific Ocean. Yet these actions lack uniformity. There is no universally agreed upon definition, only broadly stated descriptions quite sweeping in scope.⁵ That vagueness creates the threat of inappropriate enforcement.

³The alleged violations were based on measures adopted in 2011 and 2012 by the IATTC. However, the vessels in question had not been listed (and are still not listed) by the IATTC as IUU vessels.

⁴In *Etheridge v. Pritzker*, No. 2:12-CV-79-BO (E.D. North Carolina) (decided Nov. 22, 2013), a NOAA civil penalty shark finning case begun in 2007 was decided by a Federal judge, who ruled that NOAA and an administrative law judge got the law completely wrong in applying the ban on shark finning and threw out the entire case after 6 years in the NOAA enforcement system.

⁵Illegal fishing means harvests in violation of coastal nation law and measures adopted by RFMOs. Unreported fishing means harvest that have not been reported, or are misreported, to management authorities. Unregulated fishing means activity by stateless vessels or vessels op-

Here are a few considerations that should be kept in mind when considering this new legislation:

First, the United States currently has sufficient laws on the books to deal with IUU fishing as it relates to our own fisheries, imports into the United States, and exports from the United States. In fact, it can be said that the U.S. commercial fisheries business is the most highly regulated in the world and the U.S. laws the most strict. The Nicholson Act, 46 U.S.C. § 55114, enacted in 1950, prohibits a foreign-flag vessel from landing any fish caught on the high seas, or any product made from that fish, in a port of the United States, unless authorized by treaty. Any such fish or product is subject to forfeiture by the Department of Homeland Security and any trader in the United States is liable for a \$1,000 fine.

So fish from any high seas fishing activity by a foreign-flag vessel cannot now enter the United States at all, unless there is a treaty in place that allows landings.⁶ The only exceptions are ports in American Samoa, Guam, and the Virgin Islands. Thus, foreign fishing vessels may enter only a few American ports. A National Plan of Action with respect to IUU fishing, prepared by the State Department, NOAA, the Coast Guard, the Fish and Wildlife Service, and the U.S. Customs Service nearly 10 years ago concluded that, because of that fact, “it may not be necessary for the United States to establish a ‘national’ strategy and procedures for Port State Control in this context.” National Plan, at 24.⁷

The most important statute is the Lacey Act, 16 U.S.C. § 3371 et seq., which other countries believe should be emulated in their domestic laws to address IUU fishing.⁸ Among other things, the Lacey Act makes it illegal to import fish or fish products into the United States that were caught or produced in violation of any foreign law. Perhaps the best example of its use to prevent IUU fishing is the case of *U.S. v. Bengis*, 631 F.3d 33 (2nd Cir. 2011). Mr. Bengis, a U.S. citizen, and his colleagues operated for years an illicit harvest and export operation from South Africa taking rock lobsters in violation of that country’s laws, as well as Chilean sea bass caught elsewhere, and exporting them to the United States. In 2004, Mr. Bengis pleaded guilty to a criminal conspiracy to import nearly \$90 million in IUU fish into the United States and forfeited \$13 million to the United States. The Second Circuit Court of Appeals also ordered Mr. Bengis to pay restitution to the South African Government for loss of the lobsters.⁹ The government was seeking nearly \$40 million in restitution. The Lacey Act has been used to interdict salmon unlawfully harvested in the high seas, illicit king crab from Russia, and spiny lobsters from Honduras.

Second, responsible U.S. fishing industry participants are moving to address IUU fishing through the marketplace, given the limits and inefficiencies of command-and-control government regulatory systems in many countries around the world. A good example is the International Seafood Sustainability Foundation (ISSF), a non-governmental organization that focuses on the sustainability of the global tuna market. ISSF, comprised of scientists, tuna company officials, and representatives of environmental groups, develops best practices and policies to address a wide range of sustainability issues, including IUU fishing. Recently, ISSF published a paper outlining the steps needed to improve compliance in tuna RFMOs, a challenging subject.¹⁰ As of the first of this year, ISSF member companies will not engage in transactions with purse seine vessels unless their flag nation is in substantial compliance with RFMO obligations. In effect, the industry is in the front line carrying out tuna RFMO conservation measures.

The National Fisheries Institute has developed an implementation guide for applying traceability standards in the U.S. seafood supply chain, beginning with the catching vessel to the table. Finally, labeling standards, such as “Dolphin-Safe” and those provided by the Marine Stewardship Council and others, also create incentives to conduct responsible fishing operations or else the product may not be allowed into the marketplace.

erating under flags of convenience where the flag country ignores what is going on. “Closing the Net: Stopping Illegal Fishing on the High Seas,” Final Report of the Ministerially-led Task Force on IUU Fishing on the High Seas (2006), at 14–15.

⁶The U.S.-Canada Albacore Treaty allowed such landings, but it is being terminated.

⁷The Appendix listing the existing U.S. laws that could be applied to the identified problem of IUU fishing is attached for your reference.

⁸Congress, however, has specified that the Lacey Act does not apply to fishery activities regulated under the Magnuson-Stevens Act or certain tuna conventions. 16 U.S.C. § 3377.

⁹See Meyer, “Restitution and the Lacey Act: New Solutions, Old Remedies,” 93 Cornell L.R. 849 (2008).

¹⁰Koehler, Promoting Compliance in Tuna RFMOs: A Comprehensive Baseline Survey of Current Mechanics of Reviewing, Assessing, and Addressing Compliance with RFMO Obligations and Measures, ISSF Technical Report 2013–2.

The private Sector has a very key role to play here and steps are being taken to address a problem that impacts the entire market, given the problem of governance capacity in many countries with fishery resources that are exported to world markets.

Third, addressing and eliminating IUU fishing requires a sophisticated management and regulatory system, with strong scientific support. It also requires an enforcement system that respects due process and civil rights. Unfortunately, the capacity to create and maintain the kind of regulatory system that exists here in the United States is limited by the political will and wealth of a particular country and is not currently prevalent in many developing countries. Some countries do not even maintain a searchable online library of their fishing laws and regulations. A July 2005 Report on IUU Fishing and Developing Countries by the Marine Resources Assessment Group Ltd. concluded that its "analysis uncovered a striking relationship between the level of governance of a country and its vulnerability to IUU." Consequently, there is a danger that a country with weak governance, once given the authority set forth in the Port State Treaty, will use that authority to inspect and fine vessels for its own narrow purposes, i.e. to increase income or protect home-base competitors.

Fourth, H.R. 69, if enacted, would add a new general enforcement provision to the Magnuson-Stevens Act¹¹ that, in effect, incorporates the civil penalties, permit sanctions, criminal offenses, civil forfeitures, and enforcement provisions of that law (16 U.S.C. §§ 308–311) into nine other resource management statutes, presumably as a substitute for the comparable provisions of those statutes. If this is the intent, this would have the effect, among other things of setting the maximum civil penalty that can be assessed under those nine statutes at the current maximum in the Magnuson-Stevens Act of \$140,000 per violation. As a result, the enforcement provisions and penalty amount would be similar across all statutes, a welcome development given the patch-work nature of the enforcement provisions in those statutes. This would mean that similar transgressions under each law would be treated similarly, an important improvement in fairness.

Finally, given that the Magnuson-Stevens Act would become the central mechanism to enforce alleged violations of all these statutes, now may also be a good time to amend the Magnuson-Stevens Act enforcement and penalty provisions to incorporate into law the recent program changes instituted by NOAA in its enforcement program and to improve the fairness of its civil penalty, permit sanction, and civil forfeiture programs. H.R. 69 gives the United States the opportunity to reinforce its commitment to fair and equitable law enforcement and to provide leadership to other countries for improving their enforcement programs, particularly given the new authority in the Port State Treaty to inspect foreign-flag vessels, including vessels flying the U.S. flag. The suggested changes deal with the statute of limitations, hearing procedure and application of rules of evidence, and setting forth the factors to be considered in settling a penalty amount, and are discussed below.

H.R. ___, the Pirate Fishing Elimination Act

This bill would implement the Port State Treaty and create a new, separate regulatory and enforcement regime to address IUU fishing of almost any kind, trivial or destructive, accidental or intentional through authorities in "Port" States to enforce fishing laws in much the same as the Lacey Act operates, with a whole new set of enforcement tools and penalty amounts. It is clear, however, that the drafting of this bill was not undertaken in a manner that considers the Lacey Act and the Nicholson Act, or even the provisions in H.R. 69. For example, even though H.R. 69 can be read to limit civil penalties to no more than \$140,000 per violation, the Port State bill has a separate section on civil penalties, which are increased to \$250,000 for each violation, even for acts in violation of one of the statutes implementing RFMO measures (which may be limited to no more than \$140,000 per violation).¹² The Port State Measure is drafted to apply to any person subject to the jurisdiction of the United States (Sec. 4(a)(3)) and covers any activity considered IUU fishing

¹¹Technically, the amendments are to the High Seas Driftnet Fishing Moratorium Protection Act, which has been codified as part of the Magnuson-Stevens Act at 16 U.S.C. § 1826a–k. Perhaps the committee might examine a more straight-forward drafting approach, rather than using the High Seas Act, to create a single enforcement regime for all fishery conservation statutes, based on the provisions in the Magnuson-Stevens Act.

¹²The existing suite of U.S. enforcement laws, and existing penalties, has worked in bringing U.S. fisheries to sustainability. See Daniel Pauly, Op. Ed., *New York Times*, March 26, 2014 (Fishing grounds off the United States are being replenished, owing to the passage in 1976 of the Magnuson-Stevens Act). It is hard to understand, therefore, why increasing the amount of civil penalties with respect to domestic U.S. fishing operations will do anything to address IUU fishing off West Africa in where our vessels do not fish.

under the sweeping definition if it is in violation of any law or regulation in Sec. 3(10). As a consequence, if enacted, this bill will cause confusion and duplication and will trump the enforcement provisions in all other fishery regulatory statutes.

Here are some further particular concerns:

Title: The title, though catchy in our Internet world, is not accurate with respect to the international legal definition of what constitutes piracy. Given the broad sweep of the bill, some Members of Congress might be surprised to learn that the definition of pirate fishing would apply to their fishing industry constituents who misreported their catch to the National Marine Fisheries Service by even 1 percent, even if in error, given the strict liability nature of civil penalties under the Magnuson-Stevens Act. Such a transgression would be fishing activity in contravention of the laws of a nation in waters subject to that nation's jurisdiction, within the meaning of the IUU definition in the Port State Measure, and therefore are covered under the Pirate Fishing Elimination Act.

Calling every fishing transgression piracy is unnecessarily over the top, to say the least, and also legally inaccurate. The definition of piracy is carefully drafted in Article 101 of U.N. Convention on the Law of the Sea and that provision is considered binding international law by the United States. It does not cover ordinary fishing violations. In addition, the Law of the Sea Convention states, in Article 73.2, that coastal State penalties for violations of fisheries laws and regulations in the exclusive economic zone may not include imprisonment, in the absence of agreements to the contrary. So calling all fishing violations piracy simply does not comport with customary international law and is needless hyperbole.

Definition of IUU Fishing: What is most troubling is the definition of IUU fishing, to include anything and everything in the kitchen sink, not just the more severe, repetitive or criminal behavior. The bill would make a U.S. fishing vessel subject to inspection and sanction for any alleged violation of law of any kind, even exclusive U.S. rules of the most trivial nature, if it offloads in a foreign port. All that is needed is an allegation that enforcement officials in that country have "reasonable grounds" to believe a violation covered by the Port State Treaty and the broad definition of IUU fishing has occurred.¹³ I am familiar with many of the countries in the Pacific where U.S. vessels occasionally land their fish, and their legal procedures are not always conducive to easy resolution of allegations of fishing violations, even if the allegations are clearly false,

Enforcement of RFMO Conservation Measures: The United States generally has existing legal authority to enforce conservation and management measures adopted by RFMOs and agreed to by the United States. For instance, H.R. 69, at Sec. 101, references the domestic statute implementing the Western and Central Pacific Fisheries Convention (16 U.S.C. § 6901 et seq.). That statute authorizes rulemaking, enforcement, and penalty assessment for the tuna RFMO in that region with respect to U.S. vessels. Should any non-U.S. fishing vessels participating in that fishery call at American Samoa or Guam, the Lacey Act could be applied to sanction a clearly established violation of an RFMO conservation measure. Yet the Port State Measure would create an entirely new set of measures that are mostly duplicative and/or contradictory in comparison to our existing laws and the terms of H.R. 69.

The Enforcement Provisions: It makes no sense to create a whole new set of enforcement provisions (with higher limits on penalties) in a new statute when the comprehensive enforcement provisions of the Magnuson-Stevens Act could be referenced, as in H.R. 69. The enforcement provisions of the Magnuson-Stevens Act can very easily form the basis for enforcing restrictions on IUU fishing as well.

H.R. 69, the Illegal, Unreported and Unregulated Fishing Enforcement Act

In General: This bill would be a welcome addition, because it makes enforcement provisions in several marine resource management statutes, some of which implement RFMO conservation measures, closely comparable. U.S. fisheries industry is highly regulated and understands the need for inspections, subpoenas, and enforcement generally (see the new section 606(d) on SPECIAL RULES), so long as it is fair. The expanded authorities provided in H.R. 69 are features of law enforcement which the U.S. industry has come to understand and accept, again if applied fairly. Using the enforcement provisions of the Magnuson-Stevens Act (see the new section 606(d) on ADMINISTRATION AND ENFORCEMENT) as the basis for enforcement

¹³The Port State Treaty does not contain an internal definition of IUU fishing, but instead refers to "activities set out in paragraph 3 of the 2001 FAO International Plan of Action to Prevent, Deter and Eliminate IUU Fishing." That definition is as broad as in the Port State Measure, but goes on with an even more expansive gloss on this broad intent and includes activities which are not even illicit.

actions under all referenced statutes is a good development from earlier drafts of this bill. And all penalties to be issued should be set at the same maximum as in the Magnuson-Stevens Act. Having a single set of comprehensive enforcement provisions that apply across all relevant fishery management statutes will be an improvement from the hodge-podge nature of the existing collection of statutes.

With respect to the Antigua Convention Implementation Act, I am not aware of any opposition to the Antigua provisions in H.R. 69, as many of them are already being implemented with respect to the IATTC.

IUU Lists: It is not difficult to find lists of vessels that are considered IUU by certain RFMOs, which mostly focus on State-less vessels or really bad actors. In some countries, issuing documentation to fishing vessels is a source of income and that is all, unfortunately. These vessels then compete with more highly regulated vessels from responsible nations. One hopes that global awareness will stop this kind of activity. U.S. vessels need support from our government in light of competition from less regulated vessels from less responsible nations.

With regard to such lists and to our own country's listing of IUU countries, I would recommend that the focus not be on the trivial but on the most egregious violations. Creating a program of hounding countries over minor transgressions, or slow procedures, is not likely to create much respect. Worse, this practice could end up harming U.S. vessels given that turnabout is fair play with regard to U.S. vessels fishing in other countries' waters.

Disclosure of Enforcement Information: One provision in H.R. 69 addresses the question of sharing enforcement information obtained by the Secretary of Commerce with international organizations, including RFMOs. In this regard, I had assumed that that authority already existed but if not, so long as proper protections are in place similar to our Freedom of Information Act or the confidentiality provisions of the Magnuson-Stevens Act, such new statutory authority might be needed. But it should be also aimed at obtaining enforcement information from other countries, i.e. the Secretary of Commerce should be seeking enforcement information from other countries to determine if any enforcement of RFMO conservation measures is occurring. In addition, this raises the question of whether observer reports should be made available to U.S. fishing vessels captains and vessel owners for comment at the end of a fishing trip. Although certain RFMOs allow this practice, such as the IATTC (with U.S. consent), NOAA is resisting such disclosures in the western Pacific, until years later in an enforcement proceeding. Perhaps this issue can be clarified in H.R. 69.

Improvement of NOAA's Civil Penalty Procedures: Finally, it may be appropriate for the committee, as part of H.R. 69, to include amendments to the Magnuson-Stevens Act enforcement provisions to provide greater balance to the NOAA enforcement program, which has been recently criticized by a Federal judge for over-enforcement in New England. Including the agency changes in legislation, along with other changes to make the NOAA process more like the penalty process followed by the Environmental Protection Agency, would be a useful way of confirming the U.S. leadership in pursuing fishing sanctions in a fair and even-handed manner, based on the rule of law. Therefore, I refer the committee to my letter of January 31, 2014 which discussed in greater depth than appropriate here the legislative changes I have suggested, based on my years of experience in defending civil penalty cases. More can be done to make the NOAA penalty process fair, such as by requiring the use of the Federal Rules of Evidence and reducing the statute of limitations from 5 to 3 years, among other changes,

In summary, Mr. Chairman, I support enactment of H.R. 69, with the modifications I have discussed above. I do not think a case has been made for enacting the Port State Measure, as it is duplicative of what this Nation already has on the statute books and would conflict with existing law in numerous respects, in addition to being inconsistent in several respects with H.R. 69. If additional authority is needed, precise provisions could be drafted to target any gaps in the law.

Thank you for the opportunity to testify here today.

LETTER SUBMITTED FOR THE RECORD BY JAMES P. WALSH, DAVIS WRIGHT TREMAINE
LLP

DAVIS WRIGHT TREMAINE LLP,
SAN FRANCISCO, CA,
JANUARY 31, 2014.

Hon. DOC HASTINGS, *Chairman,*
House Committee on Natural Resources,
Washington, DC 20515.

Hon. MARK BEGICH, *Chairman,*
Senate Subcommittee on Oceans, Atmosphere, Fisheries and Coast Guard,
Washington, DC 20510.

Re: Magnuson-Stevens Fishery Conservation and Management Act Reauthorization:
Enforcement Issues

DEAR CHAIRMAN HASTINGS AND BEGICH:

Your committees are now deep in the process of examining the current status of implementation of this Nation's primary law for the management and conservation of marine fisheries resources, the Magnuson-Stevens Fishery Conservation and Management Act (the "Magnuson-Stevens Act"), and possible amendments to that law. One of the subjects that does not always get in-depth consideration in the periodic congressional examination of the Magnuson-Stevens Act is the issue of enforcement. In this letter, I wish to offer some suggestions for amendments to the Magnuson-Stevens Act that will improve its functioning, rebalance the relationship between the regulated community and National Oceanic and Atmospheric Administration (NOAA or agency) enforcers more appropriately, strengthen procedural protections consistent with current practices, encourage greater accountability, and create greater consistency during enforcement hearing proceedings. These views are mine alone and do not necessarily reflect the views of any client or the firm.

Those who follow these issues closely are aware of the unfortunate recent experiences in the enforcement of the Magnuson-Stevens Act in New England that led to the unprecedented refund of large civil penalties.¹ Administrator reforms in NOAA's enforcement program, termination of the contract for use of Administrative Law Judges (ALJs) from the U.S. Coast Guard and hiring of ALJs from the Environmental Protection Agency (EPA), greater national oversight and guidance with regard to enforcement decisions, and (hopefully) a much better accounting and use of the funds recovered from penalties have recently been instituted by the agency. While these changes have improved the enforcement program to some degree, they come as the result of discretionary actions by the agency and have not been institutionalized through clear legislative guidance. A return to the old ways is always possible and other legislative improvements could strengthen and codify the reforms already begun by the agency. Therefore, I recommend some modest changes to the Magnuson-Stevens Act civil penalty, permit sanctions, and civil forfeiture provisions to affirm by statute needed reforms in the enforcement program. It is critically important that the enforcement system be focused not just on results but the integrity of those results as well as the process that produces those results. This letter and the attached set of suggested amendments explains those recommendations.

In addition, there are other bills before Congress that should be reviewed in the context of the Magnuson-Stevens Act enforcement provisions and other U.S. laws, such as the Lacey Act (18 U.S.C. §§ 3371–3378) and the Nicholson Act (46 U.S.C. § 55114), to ensure consistency of congressional guidance and policy and to avoid unintended consequences for U.S. fishing fleets and processors who operate through the world and in the global marketplace. These bills were drafted by the Executive Branch and sent to Congress for enactment and include: (1) H.R. 69, the "Illegal, Unreported and Unregulated Fishing Enforcement Act of 2013" (pending in the committee); (2) S. 267, the "Pirate Fishing Elimination Act" (pending on the Senate Floor); and (3) S. 269, the "International Fisheries Stewardship and Enforcement Act" (also pending on the Senate Floor). The latter bill is significant in that it expands enforcement authority generally for a wide range of U.S. fisheries laws and essentially would graft the enforcement provisions of the Magnuson-Stevens Act (16 U.S.C. §§ 1858–1861) into those laws as the primary enforcement mechanism. The other two bills address the issue of "Illegal, Unreported and Unregulated Fishing"

¹See Hon. Charles B. Swartwood, III (ret.), Special Master, Report and Recommendation of the Special Master Concerning NOAA Enforcement Action of Certain Designated Cases, April 2011.

(so-called IUU Fishing) in the international context. It may make sense for the various enforcement provisions of U.S. marine resource statutes to reflect commonality and symmetry because, without those features, unnecessary confusion and litigation will result for the government and for the regulated industry because of the law of unintended consequences.

MAGNUSON-STEVENS ACT CHANGES

It is essential that a successful regulatory regime for achieving and maintaining sustainable fisheries under the Magnuson-Stevens Act and other laws include a credible and even-handed enforcement system that commands respect. Given the extent and complexity of marine resource activities in the United States, enforcement will primarily rely upon voluntary compliance, with active enforcement efforts directed at the clear outliers in the system. As was learned in New England, over-enforcement (including overcharging and excessive penalties) will lead to widespread disrespect for the government's enforcement efforts generally. Moreover, the appearance of favoritism for the agency in administrative proceedings, such as procedures that give the agency more power in the dispute process (i.e. thereby forcing settlements favorable to the agency) or an ALJ decision that favors the agency because the evidence was not weighed properly or fairly,² will breed cynicism and anger. Although law enforcement, and the assessment of penalties and other sanctions generally, is inherently an executive function, the conduct of the enforcement system is, and must be, subject to legislative and constitutional guidance and restraint. Legislative and constitutional guidance is essential to assure that the enforcement program results in neither under-enforcement nor over-enforcement and is perceived as fair and impartial with respect to charged parties. The source of some of this guidance can be found in the Administrative Procedure Act (APA), 5 U.S.C. §§ 554–556, and the due process and excessive fines provisions of the U.S. Constitution. But provisions in particular statutes, such as the Magnuson-Stevens Act, can sharpen this general guidance, particularly where, as here, improper enforcement practices have not always been restrained by the broad legal concepts found in the APA and the Constitution. The devil's always in the details. Our Federal Court system is constantly changing and improving rules of evidence and procedure. The administrative civil penalty process, in contrast, gets very little oversight and is rarely subject to much change. As Supreme Court Justice Stephen Breyer has said: "Who is going to regulate the regulators?"³

1. Changes to the Civil Penalty/Permit Sanctions Provisions (16 U.S.C. § 1858)

The primary, or most used, mechanism of fisheries enforcement is the civil penalty, a civil (not a criminal) fine not to exceed \$140,000⁴ for a particular act in violation of a statute or regulation, such as a limit on the amount of catch or a ban on fishing in a particular area. In fact, the type of potential violations is seemingly endless as extensive and complex regulations have been issued throughout the country by NOAA since enactment of the Magnuson-Stevens Act in 1976. The extent and complexity of fishery management regulations (which sometimes change every year or even every few months) is without doubt a major problem for regulated parties and this complexity (and poor drafting) can result in unexpected and unintended violations.

Civil penalties are considered strict liability offenses, meaning a violation can occur regardless of whether the charged party was negligent or intentional in carrying out a particular act, or failure to act, or knew that a potential violation was possible. If an alleged violator wishes to challenge a penalty assessed by NOAA in a Notice of Violation and Assessment (NOVA) and it cannot otherwise be settled,

²The most recent example can be found in *Willie Etheridge, III v. Penny Pritzker*, Case No. 2:12-CV-79-BO, (E.D. North Carolina) (Judge Terrence W. Boyle) (decided November 22, 2013), where a Federal District Court judge ruled that an ALJ and agency penalty decision with respect to shark finning was not consistent with applicable law and arbitrary and capricious. This case also highlights another problem with the NOAA civil penalty system: inordinate delay in resolving charges. In that case, the Notice of Violation and Assessment (NOVA) was first sent in April 2006 and the Federal Court decision on review was issued over 7 years later in 2013.

³A law review article by Howard A. Shelanski, "Justice Breyer, Professor Kahn, and Antitrust Enforcement in Regulated Industries," 100 Cal. L. R. 487–517 (2013), summarizes a "number of challenges" in using regulations, including high cost, ineffectiveness and waste, procedural unfairness, complexity, delay, unresponsiveness to democratic control, and the inherent unpredictability of the end result (at 487).

⁴The current statutory language lists the maximum penalty as \$100,000. However, a general inflation penalty statute (the Federal Civil Penalties Inflation Adjustment Act of 1990) allows the agency to increase this maximum by regulation. Currently, the maximum penalty under the Magnuson-Stevens Act is \$140,000. 15 C.F.R. § 6.4 (77 Fed. Reg. 72915–72917; Dec. 7, 2012).

a formal trial-type hearing must be requested before an ALJ. Such hearings, particularly in larger, more complex cases, can be expensive and lengthy.

To address some of the issues raised by various regulated parties with respect to the fairness (or perceived fairness) of the administrative process for determining liability for and amount of a civil penalty, the following changes to the Magnuson-Stevens Act should be considered:

Statute of Limitations: There is a general statute of limitations for the filing of civil penalty charges by the Federal Government in 28 U.S.C. §2462. Under this law, unless otherwise provided in a particular statute (such as the Magnuson-Stevens Act), an action to enforce a civil penalty must be undertaken no later than 5 years after the alleged violation “accrued” or occurred. Congress can and often does adopt a different statute of limitations, which is purely a policy choice for the legislature. For example, the Internal Revenue Service generally has 3 years from the filing of a return to act against a taxpayer with respect to audit and payment of additional tax, with certain exceptions (such as fraud). 26 U.S.C. §6501. Given the considerable ability of NOAA to collect information through documents easily managed in modern computer systems and to require reports and observers, it would be more appropriate to have a 3-year statute of limitation for Magnuson-Stevens Act civil penalty enforcement actions. In addition, fishery management laws continuously change and an alleged violation 5 years ago may not reflect the current regulatory system. Moreover, a longer statute of limitations favors the government because evidence becomes stale and memories fade. Finally, if NOAA has a solid case to make, it should do so with greater diligence rather than waiting 5 years. A shorter statute of limitations will focus NOAA on the most important or egregious cases, the ones critical to establishing a culture of cooperation and compliance with currently applicable regulations. A similar statute of limitations should also apply to permit sanctions under subsection (g) of 16 U.S.C. §1858 and to forfeiture actions under 16 U.S.C. §1860.

Participation of Management; Establishment of Policy: The decision to bring a civil penalty action is as much a judgment call as it is a question of law or fact. Why bring this particular case? How does it send a signal about the importance of an aspect of fishery management and conservation to those being regulated? What message is there in the size of the penalty? At the moment, these questions are answered exclusively by attorneys within the enforcement section of NOAA’s Office of General Counsel and no affirmation of their unilateral conclusions is sought from the management side of the agency—for example, from those who actually approved and implemented the fishery management regulations in the first place. In effect, NOAA enforcement attorneys are acting without a real client. A lifetime of prosecuting perceived “bad guys” can create tunnel vision that leads to poor enforcement decisions, as appears to have happened in New England according to Judge Swartwood.

To address this issue, changes to the Magnuson-Stevens Act applicable to civil penalty, permits sanction and forfeiture actions can be inserted to require that the client (NOAA fishery management program officials) approve an enforcement action before it is filed. The process of explaining why a particular case needs to be brought to the “client” will serve as a check and balance on narrow individual judgment calls. In addition, it should state in the law that the primary purpose of any enforcement action is to achieve compliance with fishery management goals and that enforcement should not be used solely to generate income to NOAA.

Procedural Issues: In any legal proceeding, procedural rules, or the rules of the game, are critical to a fair and balanced outcome. NOAA civil penalty procedural rules are largely the product of the lawyers who prosecute the cases, not the wide range of viewpoints that helped develop and implement the Federal Rules of Civil Procedure. NOAA enforcement lawyers, once a NOVA is filed, are primarily interested in winning for career reasons and have a lesser interest in making sure that the outcome is balanced and fair. A good example is the manner in which the agency for years presented its “evidence” as to the amount of the penalty that is assessed. The ALJ had to accept the amount of the recommended penalty by the prosecuting NOAA attorney and could not order discovery of the basis for the amount recommended, a practice inconsistent with the APA and the U.S. Constitution. NOAA jettisoned this unfair procedure by regulation only in 2010, after following the practice for years. 75 Fed. Reg. 35631–35632; June 23, 2010.

Other important issues in the NOAA procedural regulations require similar attention. First, outcomes will be unpredictable where the well-understood Federal Rules of Evidence do not apply to the proceeding as with NOAA’s procedural rules. The general statement as to what evidence is admissible—relevant, reliable, and probative, but not unduly repetitious or cumulative—is quite broad. But NOAA’s rules

also state that “formal rules of evidence do not necessarily apply” and that “hearsay evidence is not inadmissible as such,” 15 C.F.R. § 904.251. This language, of course begs the question: what rules of evidence do apply to a particular issue, for example, the presentation of an expert witness or whether a fact witness must have personal knowledge before being allowed to testify? Another example: should someone be allowed to testify on the issue of the value of a catch who simply does an Internet search and makes a few phone calls but has no knowledge of actual current prices paid in a fishery? In short, the current rules leave it up to the ALJ to decide how to handle such evidentiary issues without any firm guidance on how to make these critical evidentiary decisions. As a result, the chance of an arbitrary ruling is greatly increased. In contrast, other agencies have addressed the issue by also making the Federal Rules of Evidence applicable, unless there is some definitive reason for not using them. In my view, this formulation brings better structure and predictability to the hearing process. Thus, an amendment to the Magnuson-Stevens Act should state the proper evidentiary standard and require the use of the Federal Rules of Evidence unless there is a clear reason for not doing so. These Rules work very well in Federal Courts throughout the country.

Second, NOAA’s current procedural rules would benefit from reformulation through notice and comment and I recommend that Congress direct the agency to begin a new rulemaking. The existing procedural rules could use a clear restatement of the generally applicable principles, such as burden of proof and the requirement that the ALJ be fair and impartial, not simply act as an adjunct to the enforcement program. A Federal Appeals Court has ruled that, where an ALJ undertook the agency’s prosecutorial function and developed evidence against a defendant, he overstepped the permissible scope of his duties. *N.L.R.B. v. Tamper, Inc.*, 522 F.2d 781, 790 (4th Cir. 1975). If the respondent in a NOAA civil penalty hearing is represented by counsel, as the agency also is, the ALJ’s job is always to act as a neutral trier of fact and not help the government meet its burden of proof by unilaterally building a “complete” record for review. *See also, Goldberg v. Kelly*, 397 U.S. 254, 271 (1970) (an impartial decisionmaker is essential to due process in administrative adjudicatory proceedings); *Butz v. Economu*, 438 U.S. 478, 513–517 (1978) (contrasting the role of an independent, impartial ALJ with that of agency counsel, who function like prosecutors). Incorporating these concepts into NOAA’s procedural regulations is timely and appropriate. Thus, I recommend a new statutory provision that directs NOAA to begin a new civil procedure rulemaking within 6 months of any new amendments to the Magnuson-Stevens Act. NOAA would do well to look to the administrative penalty rules followed by the EPA, 40 C.F.R. Part 22, particularly now that EPA ALJs serve NOAA as well. Those rules repetitively emphasize the obligation of an ALJ to provide an efficient, fair and impartial adjudication. No comparable language is found in the NOAA procedural rules.

Legal Constraints: One of the constraints on ALJ authority in the NOAA procedural regulations is the inability to rule on important legal questions that may come up regarding whether a particular regulation is constitutional or otherwise legally valid. 15 C.F.R. § 904.200(b). It seems logical and efficient that an ALJ consider these kinds of seminal legal issues when reviewing the facts of the case under applicable law. I could find no basis for this rule in the APA for such a limitation of power, although NOAA probably has the power to create the limitation. But this limitation forces a charged party to go to hearing even where it may be legally obvious that the regulation has no basis in the law, then to challenge the issue in an appeal to the NOAA Administrator or a Federal Court after an Initial Decision by an ALJ. An ALJ should be able to rule that the agency’s regulations, as drafted or as applied, are unlawful. Providing this authority could lead to early settlements where the agency has made a mistake of law. Giving such authority to the ALJ also enables the charged party to develop a record for possible NOAA Administrator and/or court review. I recommend that Congress request that NOAA amend its procedural regulations to eliminate this restriction. No such restriction can be found in the list of powers of an ALJ under the EPA administrative penalty rules. *See*, 40 C.F.R. § 22.4(c). Under those rules, an ALJ may “adjudicate all issues.”

Penalty Considerations: The Magnuson-Stevens Act contains a list of factors to be considered when determining the amount of a penalty. One of the factors that should be added is the complexity and clarity of the application regulations, which can be a real-life problem as was evident in the New England cases and others.

2. Changes to the Civil Forfeiture Provision (16 U.S.C. § 1858)

The United States substantially reformed all civil forfeiture laws by enactment of the Civil Asset Forfeiture Reform Act of 2000, amending various provisions of titles 18 and 28, United States Code, among others. One major reason for reform was the extensive misuse of civil forfeiture laws to raise money for enforcement agencies.

This law has both procedural and substantive restraints on civil forfeiture actions, including providing for an innocent owner defense, legal fees against the government for wrongful seizure, and a bar on any forfeiture that is grossly disproportional to the gravity of the offense. The Magnuson-Stevens Act has a general civil forfeiture provision—for vessels, fishing gear, cargo, and fish—that is presumably subject to this law to some extent, although NOAA’s civil procedures rules do not make this clear. The Magnuson-Stevens Act forfeiture provision authorizes seizure by the Attorney General in a Federal District Court and states that the “customs laws” apply to these judicial forfeitures after a judgment in court. NOAA’s rules also provide for administrative forfeiture of property worth \$500,000 or less, although it is unclear from where the authority is derived.

The Magnuson-Stevens Act should be amended to direct NOAA to conform its rules and practices to requirements and restrictions of the Civil Asset Forfeiture Reform Act of 2000. In addition, the statute of limitations with regard to civil forfeiture under the Magnuson-Stevens Act should be 3 years after the time when the involvement of the property in the alleged offense occurs. In nearly all cases, this will be at the time the agency becomes aware of an alleged fishery regulation violation. Frequently, the agency will seize the fish immediately involved in a suspected violation on the basis of probable cause and sell it. The value of the catch can also play a role in the setting of a civil penalty amount. The concern is that the agency will seek to forfeit the fish but the value of the fish (or the vessel) may far exceed the civil penalty that might reasonably apply to the violation. How does the agency determine the relationship between the civil penalty and the value of any property that is or might be seized for forfeiture? No doubt the days of seeking forfeiture of a fishing vessel, its catch, and its nets while also seeking a hefty civil penalty, plus permit sanctions, are gone. But it is not entirely clear. All these forfeiture issues require further clarity in the agency’s regulations at a minimum and in the Magnuson-Stevens Act as well. It is time to update the law in this regard, in particular by incorporating the provisions of the Civil Asset Forfeiture Reform Act of 2000.

OTHER PENDING LEGISLATION

Pirate Fishing?

Who can be against the Pirate Fishing Elimination Act? No one, of course, would sensibly take that position given the tag word “pirate” in the title. However, the pending proposed legislation (S. 267) requires a closer look to see if there are any unintended consequences if we simply adopt that legislation as written into law. Anyone who follows fishery management closely knows that there is a significant problem in the world with regard to extensive illegal, unreported and unregulated (IUU) fishing activities outside the rules of Regional Fishery Management Organizations (RFMOs) or the rules of any nation. In addition, in some international fisheries, other countries do not enforce the rules of RFMOs against their vessels but U.S. flag vessels are subject to extensive regulation and scrutiny and occasional fines and sanctions for transgressions. Then there is the truly unregulated fishing activity by vessels that have no meaningful connection to the country whose flag they fly or that operate without a flag. *See generally*, NOAA Report to Congress, “Improving International Fisheries Management,” January 2013.

The concerns about S. 267 are at least three. First, does the legislation sweep too broadly in its terms to cover even a fix-it ticket that has been unpaid, thereby giving other countries unnecessary authority to cite or seize U.S. flag vessels in their ports and demand payment of fines merely for income? Use of the inflammatory words “pirate fishing” is, unfortunately, not legally accurate in this context. An act of piracy on the high seas was recently adjudicated by the Ninth Circuit Court of Appeals, ironically during fishing activity for whales. *Institute of Cetacean Research v. Sea Shepherd Conservation Society*, 708 F.3d 1099 (2013).⁵ In that case, the Court applied the definition of piracy contained in Article 101 of the U.N. Convention on Law of the Sea: “illegal acts of violence or detention, or any act of deprivation, committed for private ends by the crew or passengers of a private ship . . . and directed on the high seas, against another ship . . . or against persons or property on board such ship.” The defendant group aggressively interfered with a fishing operation that was considered legal under international law.

⁵ Chief Judge Alex Kozinski: “You don’t need a peg leg or an eye patch. When you ram ships; hurl glass containers of acid; drag metal-reinforced ropes in the water to damage propellers and rudders; launch smoke bombs and flares with hooks; and point high-powered lasers at other ships, you are, without a doubt, a pirate, no matter how high-minded you believe your purpose to be.” 708 F.3d at 1101.

But S. 267 defines IUU broadly to include any activity (1) within 200 nautical miles by a U.S. or foreign vessel that contravenes any law or regulation of another nation or (2) anywhere in contravention of the conservation and management measures of an RFMO. Contravention of *any* law or regulation? Should a vessel that mistakenly fished in the wrong area and paid a fine be considered an “IUU Vessel?” Once again, the devil is in the details. S. 267 condones an action by any signatory coastal nation to seize a U.S. vessel if there is reason to believe that the fish on board was taken in violation of *any* foreign law or *any* conservation or management measure. Sec. 7(a). And the title of the bill (even though it has no legal effect) provides color to the argument that that U.S. vessel is engaged in piracy. These are real-life issues for U.S. fishing vessels operating in the Pacific Ocean. Should the definition of IUU fishing be so broadly drawn as to cover any violation, no matter how small? Should the definition omit situations where enforcement is underway in the flag nation or where a penalty has been paid and the violation resolved? Overkill from this legislation is quite possible, in addition to other unintended consequences for the U.S. fishing industry.

Second, S. 267 is inconsistent with and duplicative of other U.S. laws, such as the Lacey Act and the Nicholson Act, which already address this subject. Currently, the Nicholson Act bars the unloading in a U.S. port from a foreign vessel of (1) any fish caught by that vessel on the high seas or any fish product therefrom; or (2) any fish or fish products taken on board that vessel on the high seas from a vessel engaged in fishing operations or the processing of fish or fish products (e.g. transshipping). Unless a treaty is in place allowing landing by a foreign vessel, it does not matter if the fish was taken legally or illegally—it cannot come into the country. This law is enforced by the Secretary of Commerce and the U.S. Customs and Border Protection. Therefore, the Nicholson Act already addresses IUU fishing on the high seas. For any other IUU situation, the Lacey Act already provides a “port” remedy in the United States. That law, used frequently in fish product cases, prohibits trade (including imports) in any fish taken in violation of any U.S. tribal or foreign law. *U.S. v. 594,464 Pounds of Salmon*, 687 F. Supp. 525 (W.D. Wash. 1987), *affirmed*, 871 F.2d 824 (1989). Thus, there is no gap in U.S. law that needs filling by enactment of S. 267 or its House counterpart, H.R. 69.

Finally, is this really a U.S. problem and do we really need more domestic laws on this issue? A more complete list of U.S. laws and regulations applicable to IUU fishing is found in Annex 2 to NOAA’s January 2013 Report on this subject. There is no question but that the ball lies in the court of nations other than the United States, not only coastal nations that need to increase their capacity to regulate and enforce laws in their own 200 mile fishing zones, but also other fishing nations that do not in any way hold their vessels to the same enforcement accountability as the United States applies to its vessels. Many RFMOs are moving to specify clear rules as to the proper oversight of fishing vessels by member nations. Lists of vessels that have been found to engage in IUU fishing can be found on their Web sites. In addition, there are organizations such as the International Seafood Sustainability Foundation consisting of industry and environmental groups that are addressing the issue in the marketplace, outside traditional command and control regulatory systems. This entire issue needs closer examination by the Congress before a new law on IUU fishing is enacted, to include examination of real need and possible unintended consequences.

Some will argue that we must show leadership in preventing overfishing throughout the world and that approval of this international agreement on IUU fishing will demonstrate that leadership. We already address the issue of IUU fishing as it may touch the United States through existing laws, a comprehensive regulatory system, and an enforcement program that far exceeds what other countries do. Why isn’t that kind of leadership enough? Symbolic adoption of legislation that only adds to the uncertainty and complexity for U.S. fisheries participants but fails to get others to change their practices is simply idealistic rather than realistic and could well be counterproductive. We must also be mindful of the cost of more implementation and regulatory activity in these times of constraint on the government’s budget and personnel. *See generally*, Statement of Arnold Palacios, Chairman, Western Pacific Fishery Management Council before the U.S. Senate Committee on Oceans, Atmosphere, Fisheries and Coast Guard; January 30, 2014.

International Stewardship Act

While the recent version of this bill is an improvement over past drafts, this piece of legislation also deserves greater scrutiny as to the need for more regulatory authority against U.S. industry in light of existing laws and regulations and the question, again, of unintended consequences. Perhaps further hearings should be held to inquire into these issues.

SUMMARY

The United States leads the world in fishery management efforts to manage its own fisheries sustainably and in support of RFMOs and other international management entities. It is unlikely that we can make the big difference in IUU fishing as it requires far more effort by other countries. One of the major differences in the fisheries business since enactment of the Magnuson-Stevens Act is the growth of a very active, globalized market for fish and fish products. Nearly every country has embraced, to some considerable degree, an open market trading system. In 1976 the world was broken down into the market economies, the communist system, and the Third World (now called emerging markets). All that has now changed, particularly with the growth of markets all over the world (particularly for fish products), in large part because of the trade and foreign policy leadership of the United States. Given this global system we fostered, the United States cannot now go it alone on any aspect of this global trade and certainly cannot create new trade restrictions on fish and fish products that are, in effect, a substitute for inadequate fishery management and enforcement measures by other coastal countries or fishing vessel flag nations.

The idea, held by some, is that we must regulate American businesses first and often in order to lead the way to fisheries sustainability throughout the world. Considerable progress has been made on the sustainability front domestically, U.S. fishing fleets have contracted since 1976 in many of our fisheries, and U.S. companies must struggle constantly against considerable and growing foreign competition. Perhaps now the Magnuson-Stevens Act should be amended to shift more focus to helping American businesses compete in the world marketplace by adopting only those regulations as are absolutely essential to achieve core goals and by ensuring that over-regulation and over-enforcement do not prevent our participation on the “playing field.” It is hard to argue for a level playing field if you are not in the game.

Very truly yours,

JAMES P. WALSH.

Amendments to Enforcement Provisions of the Magnuson-Stevens Act
Section 308 (16 U.S.C. § 1858) (Civil Penalties and Permit Sanctions):

1. *Amend subsection (a) to read as follows:*
 - (a) **ASSESSMENT OF PENALTY**—Any person who is found by the Secretary to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. The amount of the penalty shall not exceed \$100,000.
2. *Amend subsection (b) by substituting the language in subsection (g) and by deleting subparagraphs (g)(2) and (g)(5) thereof and renumbering the remaining subparagraphs appropriately.*
3. *Amend subsection (c) by inserting the following new language:*
 - (c) **PROCEDURE AND POLICY**—(1) Any person who is charged with a violation of law under this section for which a civil penalty or a permit sanction may be imposed by the Secretary shall be provided (a) notice of the basis of the alleged violation and the civil penalty or permit sanction that may be imposed; and (b) an opportunity for a hearing on the record before a fair, impartial and qualified administrative law judge, in accordance with section 554 of title 5, United States Code. Notice of a violation shall be sent after review and approval by a program management official with delegated authority over the statute or regulation that is alleged to have been violated. In any hearing that is requested, the Secretary shall have the burden of proving any such violation and the reasonableness of any civil penalty or permit sanction that may be imposed. Any final determination of liability for and the amount of any civil penalty shall be based on a preponderance of the evidence. In any such hearing, all evidence that is relevant, material, reliable, and probative and is not unduly repetitious or cumulative shall be admitted. Unless inconsistent with the Administrative Procedure Act, the Federal Rules of Evidence shall also be applicable. The administrative law judge assigned to the hearing may rule on all factual and legal issues.

- (2) The purpose of any enforcement action under this section shall be to achieve compliance with marine resource management plans and objectives and shall not be solely for generation of income to the government.
- (3) In determining the amount of any civil penalty or extent of any permit sanction under this section, the Secretary shall take into account the nature, circumstances, and gravity of the prohibited acts committed, as well as the complexity and clarity of any applicable regulation or statutory provision that applies and the applicability of other penalties, such as criminal penalties, permit sanctions, or asset forfeitures, to the same prohibited acts. In addition, the Secretary, with respect to the violator, shall take into account the degree of culpability (if proven by substantial evidence), any history of prior offenses, and such others matters as a just and fair resolution of the matter may require. In assessing such penalty, the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay if such information is provided at least thirty (30) days prior to any administrative hearing. Any penalty amount or permit sanction imposed shall be reasonably related to the offense that was committed and shall not be excessive.
- 4. *Amend subsection (d) by substituting the language in section (b) and substituting "(b)" for "(g)" in the second line thereof.*
- 5. *Renumber the remaining subsections appropriately (Failure to Pay; In Rem Jurisdiction; Compromise or Other Action).*
- 6. *Add the following new subsections at the end of the section:*
 - () Within six (6) months of [enactment of this amendment], the Secretary shall initiate a rulemaking to revise the civil procedures rules in Part 904 of title 15, Code of Federal Regulations, to make them consistent with this section and Section 308. In addition, any such revised rules shall provide for the availability of alternative means of dispute resolution in accordance with sections 571–583 of title 5, United States Code, and for summary adjudication in favor of any party where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Section 310 (16 U.S.C. § 1860) (Civil Forfeitures)

- 1. *Amend subsection (a) by adding the following new subparagraph (2) and (3):*
 - (2) Any forfeiture action under this section shall be governed by the provisions of the Civil Asset Forfeiture Reform Act of 2000 (Pub. L. 106–185; Apr. 25, 2000).
 - (3) No forfeiture action may be instituted more than three (3) years after the time when the property was used in the alleged offense.
- 2. *Amend subsection (c) by deleting the second and third sentences thereof.*

Dr. FLEMING. Thank you, Mr. Walsh for your testimony as well. At this point we will begin member questioning of the witnesses. To allow all members to participate and to ensure we can hear from all witnesses today, members are limited to 5 minutes for their questions. However, if members have additional questions, we can have more than one round of questioning. In some cases we may submit them to you verbally or in writing and ask for a written response.

Therefore, I recognize myself.

Mr. Pettinger, let me see if I understand what happened here. You started off and I think your original loan was \$35.7 million.

Mr. PETTINGER. Yes.

Dr. FLEMING. And after how many years now?

Mr. PETTINGER. Actually that was a total loan for all of the groundfish fishery and the shrimp and crab fisheries, but we start off with the groundfish portion and that was \$28.7 million, I believe.

Dr. FLEMING. But you owe \$27 million now. Is that on the totality of the loan or just the—

Mr. PETTINGER. Just the groundfish portion. We owe \$700,000 less than we started with.

Dr. FLEMING. And that is after how many years?

Mr. PETTINGER. Eight and a half years of payments.

Dr. FLEMING. That does sound like a payday loan proposition there. That is not much progress, is it?

Mr. PETTINGER. You know, the good news is that we are into the black or the bad news is it took us 8½ years and \$20 million to get there.

Dr. FLEMING. Right. Well, you know, it is interesting. In this one case the government seems to be getting a better deal than it should, and you do not find that very often, but it looks like it is that way here.

And, of course, I think you mentioned that there was some delay before you could actually begin collecting revenue, which you were already up to something like three million-something before you could actually collect the first dime.

Mr. PETTINGER. Well, the total loan amount was \$4.23 million tacked onto the overall loan amount.

Dr. FLEMING. I see, yes. OK.

Let's see now. This really is not an issue addressed in H.R. 2646, but I understand that while the Catch Share Program has been successful, there are some species that are managed under the plan that are not being harvested. Maybe as much as two-thirds of the total allowable catch remains in the water.

You note that this may be the result of antiquated regulations. What is being done to update these regulations?

Mr. PETTINGER. Well, we are in the process of trying to move some trilling amendments through the council process, and it has been going very slow. We did manage to get the 3 percent cost recovery fee through, but there are a lot of things that we need to do to make this fishery more efficient.

A couple of things is since we have 100 percent accountability, to open up the gear as far as the different type of nets that we can use to be more efficient to catching certain species that are very healthy. Yellowtail rockfish, for instance, the quota is like six million pounds. I think our best year we have done so far is maybe two million pounds. That is because through a loophole the whiting fishery opens up on June 15. People can declare themselves in the whiting fishery and use a mid-water net to catch yellowtail rockfish because it is up in the mid-water.

That quota is going to triple, I think, maybe in June for the 2015–16 season, but that is the kind of regulatory adjustment we need. It may be a rationalized fishery, but it truly is not rationalized as far as all of the tools available to us.

And that is what we need. We need some relief in the meantime until we get there. We are just not there yet.

Dr. FLEMING. Sure. Mr. Walsh, you note that any violation of the Magnuson-Stevens Act by a U.S. vessel could lead to that vessel being identified as an IUU vessel. If that vessel never left U.S. waters, would there be any effect of being labeled as an IUU vessel?

Mr. WALSH. I would think so because the concern I have about Mr. DeFazio's draft bill, with all due respect—I am from Coos Bay, Oregon, and I have to be careful—I think it is so broadly drafted that it includes almost anything, even the most trivial thing.

And as I identified in my testimony, the United States identified Colombia as an IUU nation, and we have a different system than EU, but we identified it as an IUU nation on the basis of three shark finning cases and two cases of throwing salt bags into the water, and they said we were not sure how they had been resolved. So we think it is an IUU nation.

In my mind that is trivial, and if you have a broad definition that says port States can enforce violations of any nation's laws in any location, then you open yourself up to having U.S. vessels show up in a foreign port, and they are going to say, "Well, by the way, you know, you did not pay your bill for your observer you had last month and we found out about it from the U.S. Government. So we are going to hold your vessel while you pay us a fine."

I mean these things, I have actually had real experiences like this.

Dr. FLEMING. Well, and not really on this same subject, but kind of similar situations perhaps under the Lacey Act and other things, we have seen examples where the law can be overly interpreted or over harshly enforced.

Mr. WALSH. You are thinking of the McNabb case.

Dr. FLEMING. Yes. So we want this to be properly balanced, and we want to make sure that the protections are in there, especially for Americans in American vessels.

Mr. WALSH. People should not be prosecuted if the law on which you are being prosecuted has been repealed by that government. That was the McNabb case.

Dr. FLEMING. I completely agree with you. Thank you.

My time is up. I yield to Mr. Sablan.

Mr. SABLAN. Thank you very much, Mr. Chairman.

And let me go back, Mr. Walsh, because you mentioned in your testimony, sir, the importance of the Lacey Act in holding people accountable when they trade in illegal fish. So could you please elaborate on why a strong Lacey Act is important for conserving natural resources and limiting criminal activity?

Mr. WALSH. On the Lacey Act, if you look at the literature on the development of the IUU measure, the port State measure that is before you today, you will see a routine discussion by everybody around the world that they all want to emulate the Lacey Act. And the Lacey Act basically says if you import a fish into the United States or a fish product that has been caught in violation of some other country's laws, you are subject to criminal prosecution. The product can be seized and forfeited to the U.S. Government.

And very uniquely, recently a decision was made involving South African lobsters whereby the United States is able to seek restitution for South Africa for that traffic. It is a tremendously powerful law, and it is one of the reasons why I have said in my testimony I do not know that we need many more laws in this country to deal with IUU fishing as it affects us.

Mr. SABLAN. Well, thank you, but you know, I just wanted for you to repeat why a strong Lacey Act is important, sir.

Ambassador Lagon, sir, thank you. Ambassador, in your testimony you discuss the fact that there are no international labor standards for fishing vessels, and that as a result some IUU vessels are able to operate for months or years using forced labor, 3 years, as an example, for a guy who just had to pay for a baby.

So can you please discuss how the legislation before us today can help American consumers be sure that their swordfish does not come from a sign of slavery?

Dr. LAGON. Thank you for the question.

The legislation would help reinforce the robust bipartisan reauthorization of the Trafficking Victims Protection Act here in Congress last year. The International Labor Organization found that a minimum of 21 million people in the world are human trafficking victims. Three-quarters of them are for labor.

I found when I headed the State Department Human Trafficking Office a large number of them were in the illicit fishing sector. The main way that this legislation would assist would have communication between port States and between flag and port States about suspected illicit fishing vessels.

I do not quite understand the premises of Mr. Walsh in that I think it should be the interest of the business community to protect those who are legitimately living by the rules and stop those who are trying to undercut their profits by illicit fishing. If the United States wants to promote due process and international law, then it should do so by example, by—

Mr. SABLON. Right, right.

Dr. LAGON [continuing]. Getting the ratification of the Port State Measures Act and the legislation.

Mr. SABLON. Exactly, Ambassador. You know, I am also confused because Mr. Walsh in his testimony speculates that U.S. vessels and crews might be subject to enforcement abuses in foreign ports under the Port State Measures Agreement, PSMA, and I am confused because it seems that the agreement is designed to standardize treatment of foreign fishing vessels, and that it is treated with safeguards to prevent abuse. So I am glad that the two of us are absolutely puzzled. I am confused. You may be puzzled.

But would you just elaborate?

Dr. LAGON. Sure. Look. I understand skepticism about multilateral arrangements. I worked for Senator Helms of the Senate Foreign Relations Committee. I am a free marketer. I am skeptical about a regulation, but in my view the best thing we can do to raise up the standards of implementation of due process in other countries is for the United States to embrace the Port State Measures Act for better communication between States and have implementation legislation.

The Administration says on the part of the executive branch they need implementation legislation. I agree.

Mr. SABLON. All right. And so my last question, Ambassador, is how do we get more data on human trafficking in the fishing sector and help in IUU fishing and associated human bondage? Would the ability to trace seafood throughout the supply chain be helpful?

Dr. LAGON. Look. I am very glad you asked that question. Data on human trafficking is soft. One must admit that. I am not here to advocate anything else besides that. But communication between

countries will allow greater tracking and we will have a better sense of the extent of the problem, and then as a baseline what success we are having reducing the problem.

Not only are fish being netted illicitly, but it appears human beings as well.

Mr. SABLAN. Well, thank you.

My time is up, Mr. Chairman. Thank you.

Dr. FLEMING. The gentleman yields back.

Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman.

To Mr. Pettinger, on the terms of the loan and the other costs, let us just go over a couple of the other costs. There is a 3 percent fee for management of the Catch Share Program?

Mr. PETTINGER. There is a cost recovery fee to the National Marine Fishery Service.

Mr. DEFAZIO. Right. Has National Marine Fisheries documented the number as matched, that that 3 percent is their actual administrative cost?

Mr. PETTINGER. Not yet. It has been asked for. My understanding is they are being sued by the catcher-processors of the whiting sector, what they are charging them. So I would assume those will be forthcoming.

Mr. DEFAZIO. OK. So we have the 3 percent there. Observers, they are not paying 100 percent of the cost of the observers anymore, are they?

Mr. PETTINGER. It would vary by the size of vessel and the capacity, and I think that is one of the big fears here, is the smaller vessels which would catch less, it would be a bigger part of their gross. That is why we are moving forward on electronic monitoring as an alternative to lessen the cost to the fleet.

Mr. DEFAZIO. And we are a little bit slow on the electronic monitor; is that correct? Because they want to be able to deal with every contingency and with 100 percent certainty as opposed to being able to identify things 99 percent of the time?

Mr. PETTINGER. We are moving forward at a steady, slow pace, yes.

Mr. DEFAZIO. Right. But that would remove a burden.

Mr. PETTINGER. Right.

Mr. DEFAZIO. As I understand, there are like three companies that provide observers.

Mr. PETTINGER. I think there are two main ones, I believe.

Mr. DEFAZIO. Yes.

Mr. PETTINGER. But it is getting pretty hard to get observers in some of these small ports.

Mr. DEFAZIO. Right. And so, I mean, electronic monitoring is problematic not only in terms of cost, but sometimes in terms of who is sent or who is not sent to be dispatched as an observer.

Mr. PETTINGER. Yes, true.

Mr. DEFAZIO. So that is another burden.

And then, finally, we have the payday loan on top of that.

Mr. PETTINGER. Right.

Mr. DEFAZIO. OK. So how well are people doing? What percent of folks are having real trouble making these obligations and mak-

ing a living and being able to put food on the table, other than the fish they catch at home?

Mr. PETTINGER. Well, you know, I do not know everybody's business, but I was in Newport just for the day, and I had a fisherman come up to me and say, "Hey, we have to do something about this."

It is only 2 percent, which is not that much of the gross, but that comes off the top, and so if the boat, say, is netting 10 percent, that actual 2 percent that we are going to gain back is 20 percent extra that they would be receiving. So it is kind of a culmination of effects.

So we are just trying to chip away where we can. We are not going to solve the world on all of these issues, but this is one component of the things we need to work on, and we are doing all of these amendments and everything to make this fishery better and more efficient while keeping the accountability in place because that is really key to this program.

Mr. DEFAZIO. And then I asked you a question because we were puzzling; staff was puzzling; I have been puzzling for years on how this interest rate was reached since it was two points above prime at the time. You opined that it was because of risk, but you also went on to say, I mean, it is not against someone's individual boat or an individual person not being able to sustain the business anymore. It is against all of the landings of the fleet.

Mr. PETTINGER. Right.

Mr. DEFAZIO. So where is the risk? I guess if there are no more fish there would be a risk.

Mr. PETTINGER. That would be the risk. My understanding is the 2 percent is just a standard insurance that they put on top of every loan they ever do, and so if the vessel was depreciable, it makes a difference.

Mr. DEFAZIO. I am not sure that is true, but we will check into that.

Thank you, Mr. Chairman. I appreciate the time. Thank you.

Dr. FLEMING. The gentleman yields back.

We have no further questions. I want to thank Panel II today for your testimony. It was very interesting, and certainly if members think of questions afterwards, we may want to send them to you.

The record will remain open for 10 days to receive responses from the questions submitted to you.

Before I adjourn, I would like to ask unanimous consent to include in the record a letter from Mr. Peter Flournoy concerning the Antigua Convention provisions of H.R. 69.

Hearing no objections, so ordered.

[The letter from Peter Flournoy submitted for the record by Dr. Fleming follows:]

LETTER SUBMITTED FOR THE RECORD FROM THE INTERNATIONAL LAW OFFICES OF
SAN DIEGO

INTERNATIONAL LAW OFFICES OF SAN DIEGO,
SAN DIEGO, CA
APRIL 1, 2014.

Hon. JOHN FLEMING, *Chairman,*
Subcommittee on Fisheries, Wildlife, Oceans, and Insular Affairs,
Washington, DC 20515.

Re: H.R. 69

DEAR CHAIRMAN FLEMING:

I am writing you on behalf of approximately 800 West Coast troll and pole and line harvesters of albacore tuna. Most of the harvesters are small family owned businesses, many with a history of several generations. House Bill 69, which includes implementing legislation for the Antigua Convention (the revised Inter-American Tropical Tuna Convention—IATTC), is extremely important to these constituents. The albacore harvesters fishery off the West Coast falls almost entirely within this organization's international jurisdiction. The provisions which currently "level the playing field" for U.S. fishermen are being inadvertently omitted by H.R. 69.

Section 206 of House Bill 69, which amends Section 6 (16 U.S.C. 955) of the Tuna Conventions Act of 1950, unnecessarily deletes by omission very important language in the current Section 6. That language in the current Section 6 which must be retained is:

The Secretary of Commerce shall suspend at any time the application of any such regulation when, after consultation with the Secretary of State and the United States Commissioners, he determines that foreign fishing operations in the regulatory area are such as to constitute a serious threat to the achievement of the objectives of the commission's recommendations.

Section 405 of S. 269 does not have this omission and makes only minor amendments to the section. It amends this part of Section 6 (16 U.S.C. 955) as follows, retaining the important provision:

The Secretary of Commerce shall suspend at any time the application of regulations promulgated to carry out the recommendations of the Commission. when, after consultation with the Secretary of State and the United States Commissioners, Secretary of Commerce determines that foreign fishing operations in the regulatory area are such as to constitute a serious threat to the achievement of the objectives of the commission's recommendations.

Thank you very much for your attention to this matter as you proceed with this legislation.

Sincerely,

PETER H. FLOURNOY.

Dr. FLEMING. I want to thank members and staff for their contributions to this hearing. If there is no further business, without objection the subcommittee stands adjourned.

[Whereupon, at 4:16 p.m., the subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

PREPARED STATEMENT OF ANTHONY LONG, DIRECTOR, ENDING ILLEGAL FISHING
PROJECT, THE PEW CHARITABLE TRUSTS

The Pew Charitable Trusts (Pew) appreciates the opportunity to provide a statement in strong support of two bills that would reduce illegal, unreported and unregulated (IUU) fishing worldwide: H.R. 69, the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2013, and H.R.____, the Pirate Fishing Elimination Act (PFEA).

Pew has been working on a global scale for several years to support efforts to combat IUU fishing and to ensure a sustainable future for our oceans. Our research and work has led us to conclude that effective monitoring and control of fishing activities requires several essential and complementary elements: the ability to clearly identify IUU fishing vessels; information-sharing across national borders and national rulemaking; and the need for globally coordinated measures to combat IUU fishing. As a result, Pew has focused efforts on improving cooperation and information sharing among authorities; the adoption and effective implementation of policy measures that enable authorities to identify and locate fishing vessels; the development of technical capacity to sanction vessels found to be in violation of the law; and establishing robust and harmonized port controls.

IUU fishing is a global problem that threatens ocean ecosystems and sustainable fisheries. It is responsible for up to 26 million metric tons of fish, valued at \$23.5 billion,¹ being landed every year. This is equivalent to catching approximately 108,000 pounds of illegal fish per minute. Scientists estimate that one in five fish on the global market has been caught using IUU methods,² and in some parts of the world, such as West Africa, illegal fishing accounts for up to 40 percent of all wild caught fish.³

IUU fishing includes all fishing that occurs in violation of a coastal State or international fishery body management regulation, including fishing without a required license, fishing in closed areas, exceeding quotas, and under-reporting or not reporting catch. With 87 percent of the world's wild-caught fish stocks fully exploited, over-exploited or depleted,⁴ IUU fishing is a serious environmental and economic threat. It contributes to overfishing, harms rebuilding efforts, damages sensitive fish habitat, and skews scientific assessments, undermining international efforts to manage stocks sustainably. In addition, IUU vessels often have lower operating costs that could depress fish prices on the global market, putting legitimate fishing operations at an economic disadvantage.

While there has been a recent increase in the number of illegal incursions by foreign fishing vessels into U.S. waters, particularly along the Texas-Mexico border in the Gulf of Mexico, a majority of IUU fishing occurs on the high seas or in the Exclusive Economic Zones (EEZs) of developing States, where monitoring and surveillance is limited. Monitoring and enforcement of illegal fishing, particularly on the high seas, is prohibitively expensive for all but the wealthiest of nations, due to the vast size of the ocean and the sheer number of vessels. For these reasons, the risk of illegal vessels being caught at sea is very low; however, all vessels must eventually bring their fish to port. Ports with lax controls and inspection requirements, also known as "ports of convenience," have been exploited by IUU fishing fleets to land and sell their catch.

Two bills under consideration today would begin to address the challenges of IUU fishing by improving domestic enforcement capabilities and through the implementation of an international agreement, the Port State Measures Agreement (PSMA). H.R. 69 would make important improvements to existing U.S. statutes that ensure compliance with international fisheries obligations negotiated through Regional Fisheries Management Organizations. Currently, international fisheries enforcement is regulated through nine separate, and sometimes overlapping, statutes, and is carried out by a number of Federal agencies, including the National Oceanic and Atmospheric Administration (NOAA), the United States Coast Guard (USCG), the United States Navy and State enforcement agents. H.R. 69 would simplify, streamline and strengthen the enforcement provisions of these statutes and make them consistent with our domestic fisheries law, the Magnuson-Stevens Fishery Conservation and Management Act. In addition, H.R. 69 would make technical amendments to the High Seas Driftnet Fishing Moratorium Protection Act that would encourage stronger compliance by other nations with international fisheries obligations, establish an IUU vessel list to enhance monitoring of suspected and confirmed foreign offenders, and encourage information exchange amongst Federal enforcement agencies and appropriate international authorities.

The Pirate Fishing Elimination Act would address illegal fishing by implementing the Port State Measures Agreement. The PSMA, for the first time, sets an internationally agreed-upon definition of IUU fishing and establishes minimum port in-

¹David J. Agnew et al., "Estimating the Worldwide Extent of Illegal Fishing," PLOS ONE 4(2): e4560, <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0004570>.

²Ibid.

³National Oceanic Atmospheric Administration, "Illegal Fishing: Not in Our Ports", http://www.nmfs.noaa.gov/ia/iuu/portstate_factsheet.pdf.

⁴United Nations Food and Agriculture Organization, "Review of the state of world marine fisheries resources", <http://www.fao.org/docrep/015/i2389e/i2389e.pdf>.

spection standards for foreign fishing vessels. Nations that ratify the Agreement agree to designate the ports where foreign fishing vessels may enter, conduct dockside inspections of foreign vessels, deny port access and services to vessels when there is clear evidence of IUU fishing, and share information with other coastal States when a vessel is determined to have engaged in IUU fishing. By denying illegal vessels a place to offload illegal landings, the economic incentives for engaging in illegal fishing are reversed. Broad ratification will help close off ports around the world to illegal fishing vessels and eliminate the pathways that operators use to get illegal catch into the stream of commerce.

The PFEA would operationalize the concepts set forth in the PSMA, including clarifying the responsibilities of the Secretary of Commerce (NOAA) and the USCG; establishing procedures related to foreign fishing vessel entry, inspections and enforcement; and the denial of port and port service access if the vessel is suspected of illegal fishing. The United States already has robust port controls that meet the standards of the PSMA, and foreign fishing vessels are generally prohibited from offloading their catch in U.S. ports, with the exception of American Samoa, Guam, and some of the other Territories. As a result, enacting PFEA will require little change in the way U.S. law enforcement officers conduct foreign fishing vessel inspections in domestic ports. However, U.S. ratification of the PSMA and passage of PFEA is critically important to encourage other nations to ratify and implement the agreement. Thus far, the PSMA has been ratified by the European Union and 9 other countries; 25 countries must ratify the agreement in order for it to come into force.

These bills are widely supported by the Administration, including the Department of State, NOAA, and the USCG, as well as a number of domestic fishing interests and conservation organizations because they will bring countries around the globe up to the current standards of the United States. The Senate Commerce Committee has moved in a bipartisan fashion to unanimously advance the companion legislation for H.R. 69, The International Fisheries Stewardship and Enforcement Act (S. 269), and the Pirate Fishing Elimination Act (S. 267) last July. Similarly, the Senate Foreign Relations Committee unanimously approved the Port State Measures Agreement last month. Now is the time for the U.S. House of Representatives to act to improve domestic and international capabilities to monitor, track and enforce against illegal fishing activities that threaten U.S. interests and the global sustainability of our oceans.

The Pew Charitable Trusts respectfully requests that the U.S. House of Representatives move expeditiously to pass H.R. 69 and the Pirate Fishing Elimination Act as soon as possible, and looks forward to working with Members to ensure the strongest U.S. response to combat illegal fishing worldwide.

LETTER SUBMITTED FOR THE RECORD

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION,
WASHINGTON, DC,
FEBRUARY 5, 2014.

Hon. HARRY REID, *Senate Majority Leader*,
U.S. Senate,
Washington, DC 20510.

On behalf of the Federal Law Enforcement Officers Association (FLEOA), the largest nonprofit professional association representing 26,000 current and retired Federal law enforcement officers across the Nation, including member NOAA special agents and uniformed officers, we write to express our strong support for the International Fisheries Stewardship and Enforcement Act (SB 269/H.R. 69), the Pirate Fishing Elimination Act (SB 267), and the Port State Measures Agreement. We urge you to immediately pass these important bills to enhance domestic and international enforcement efforts to protect our valuable fisheries resources for law-abiding U.S. fishermen and our coastal communities.

The U.S. Coast Guard (USCG) and the National Oceanic Atmospheric Administration's, Office for Fisheries Law Enforcement (NOAA OLE) are responsible for protecting living marine resources within the U.S. Exclusive Economic Zone (EEZ), including preventing foreign illegal fishing and supporting international efforts to eliminate fisheries-related crime on the high seas. In addition, enforcement activities often transcend fisheries crime, as foreign illegal fishing vessels are known to engage in other types of transnational crimes, including drug and human trafficking, posing a persistent challenge to U.S. sovereignty.

Immediate passage of SB 269/H.R. 69; SB 267 and the Port State Measures Agreement would simplify enforcement protocols and provide the U.S. Coast Guard and the NOAA Fisheries service, Office for Law Enforcement additional tools to improve enforcement, enhance port security, protect our law enforcement officers, and take stronger action against foreign illegal fishing operators.

Specifically, the International Fisheries Stewardship and Enforcement Act (IFSEA) would harmonize existing enforcement protocols and establish streamlined standards for taking action against foreign illegal fishing vessels. The legislation also increases officer safety by making it an explicit violation to assault or otherwise oppose law enforcement officers in the enforcement of existing international fisheries laws. Finally, SB 269/H.R. 69 would enhance cooperation between the U.S. Coast Guard, NOAA OLE, other law enforcement partners, the Department of Defense and increase the resources available to enforcement officers to detect, track and prosecute foreign illegal fishing activity.

The Pirate Fishing Elimination Act would implement the Port State Measures Agreement, an international treaty that would close ports around the globe to foreign vessels engaged in illegal fishing, eliminating pathways for illegal product to enter the global fish market and reducing the economic incentive for foreign illegal fishing operators. Passage of this bill would encourage other nations to meet U.S. Standards by implementing common-sense port inspection and control requirements resulting in a broad increase in overall maritime security.

Passage of SB 269/H.R. 69; SB 267 and ratification of the Port State Measures Agreement will enable U.S. law enforcement officers to more safely and effectively apprehend foreign illegal fishing operators and build on domestic and international efforts to eliminate fisheries-related crime. Please pass these important measures as soon as possible.

Feel free to contact FLEOA Public Information Officer Jennifer Mattingly for further assistance at (202) 293-1550.

Sincerely,

JON ADLER,
FLEOA National President.

[LIST OF DOCUMENTS SUBMITTED FOR THE RECORD RETAINED IN THE
COMMITTEE'S OFFICIAL FILES]

- Letter of support for H.R. 69 and H.R. ____ "Pirate Fishing Elimination Act" from Albion Fisheries Ltd. et al., a diverse group of stakeholders.
- Letter of support for H.R. ____ "Pirate Fishing Elimination Act" from a diverse group of New Jersey stakeholders.
- Letter of support for H.R. 69 and H.R. ____ "Pirate Fishing Elimination Act" from a group of elected officials and concerned citizens in States bordering the Gulf of Mexico.

